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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 358

PORTER-WADLEY LUMBER COMPANY ET AL.,
Petitioners,

vs.

C. ORBIN BAILEY.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

JOHN B. FILES,
JOSEPH H. JACKSON,
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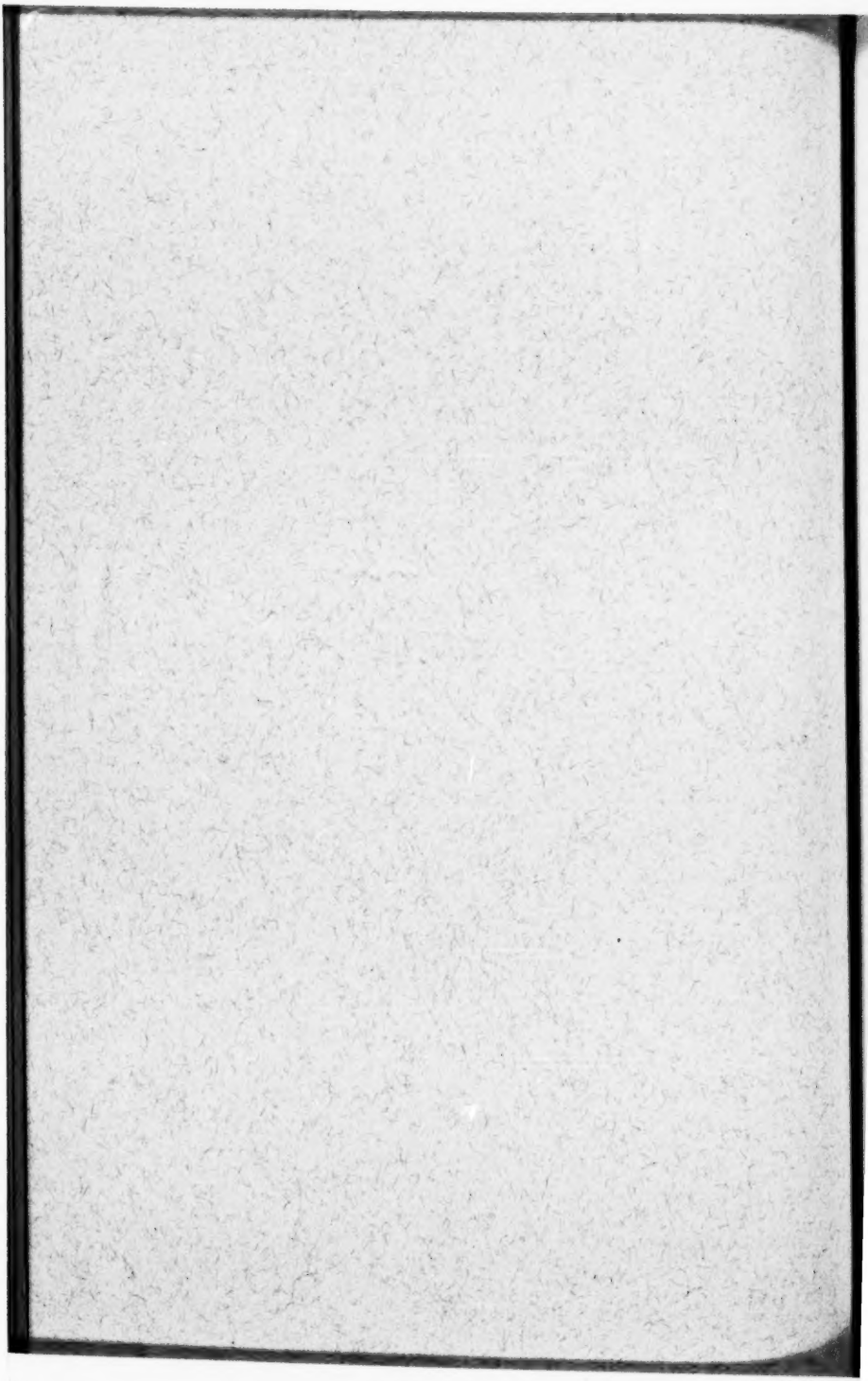

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 358

PORTER-WADLEY LUMBER COMPANY ET AL.,
Petitioners,

vs.

C. ORBIN BAILEY.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioners, J. K. Wadley, Mrs. Lillian J. Porter, Margaret Porter, Mrs. W. R. Grim, Emeline Grim Fuller, Loretta Grim Thomas, and J. M. Wilson, respectfully show:

1.

C. Orbin Bailey, respondent, instituted proceedings in the Twenty-Sixth Judicial District Court of Louisiana within and for the Parish of Webster on May 2nd, 1938, claiming the ownership and possession of the NE¼ of the SW¼ and the SE¼ of the NW¼ of Section 29, Township 23 North,

Range 9 West, Webster Parish, Louisiana; said property formerly belonged to the Porter-Wadley Lumber Company, an Arkansas corporation, which corporation sold said land February 12th, 1916, reserving certain mineral rights, to-wit:

> "The vendor, the Porter-Wadley Lumber Company, retains, reserves, holds, keeps and owns for a term of 35 years, all oil, gas, sulphur and mineral rights of any and every description that may exist, or be found in and under the lands herein conveyed, with the rights of ingress and egress for purposes of searching, developing, exploiting and producing the said oil, gas, sulphur, or minerals and the right to take water and fuel from the lands for the purpose of such exploitation, with the right to build pipe lines and tanks for the purpose of saving and removing the products that may be found.
>
> "Porter-Wadley Lumber Company shall pay to the vendee hereunder, his heirs and successors or assigns one-half of all the net revenues that may be obtained from the sale of the oil, gas, sulphur and minerals herein reserved, all more fully shown by reference to said deed, which appears recorded in Vol. 26, page 377, Records of Webster Parish, Louisiana, made a part hereof by reference."

He alleged petitioners claim to own the said mineral rights and all other assets of said corporation and have recorded a declaration of ownership of the minerals in the above lands in the Conveyance Records of Webster Parish, Louisiana.

2.

Petitioners removed timely and in accordance with law said cause from the District Court of Louisiana to the District Court of the United States for the Western District of Louisiana, Shreveport, Division, May 25th, 1938.

3.

Petitioners answered denying the title of respondent in the mineral rights so reserved by the Porter-Wadley Lumber Company, and alleging that said lumber company was incorporated under the laws of the State of Arkansas and was dissolved without debts in accordance with the laws of that State, and upon said dissolution, petitioners, as the sole stockholders, became vested with the title to the corporate assets under the laws of Arkansas; that they have never sold or disposed of said mineral rights; that Margaret Porter, one of the stockholders and a co-owner in said mineral rights, was a minor, which suspended the current of prescription not only as to her interest, but as to the interest of the other co-owners as well; that respondent was estopped to attack the title of petitioners by his joint execution of oil, gas, and mineral leases covering the minerals under the above described land and by receiving rents and revenues from petitioners in accordance with said reservation continuously through November 5th, 1936.

4.

The District Court held that the dissolution of the Porter-Wadley Lumber Company, an Arkansas corporation, in accordance with the laws of Arkansas, could not affect the title or disposition of the mineral rights in property in Louisiana, and that it continued to exist as a corporation in Louisiana; that its corporate existence was controlled by Act 267 of 1914 of the Acts of Louisiana, and that the dissolution of said corporation under the laws of Arkansas was not effective in the State of Louisiana.

5.

An appeal from said judgment to the United States Circuit Court of Appeals, Fifth Circuit, was prosecuted and

by its decree herein on April 1st, 1940, the judgment of the District Court was affirmed; the Court of Appeals held that the dissolution of the Porter-Wadley Lumber Company, an Arkansas corporation, in accordance with the laws of Arkansas, did not effect a dissolution of said corporation in Louisiana, and that the dissolution of said Arkansas corporation was controlled by Act 267 of 1914 of the State of Louisiana, as interpreted by the Supreme Court of Louisiana, holding that the dissolution of an Arkansas corporation under the laws of Arkansas is not effective in Louisiana.

Petitioners timely applied for a rehearing and assigned errors to the judgment of the District Court and of the Court of Appeals affirming said judgment, and after consideration of said application by the Court of Appeals, it was denied June 13th, 1940.

6.

In this cause, there is drawn in question the validity of Act 267 of 1914 of the statutes of Louisiana as interpreted by the Court of Appeals, Fifth Circuit. Petitioners aver that said act as interpreted is repugnant to the constitution and laws of the United States, and that respondent in this case cannot recover the property involved upon the pleadings and evidence introduced on the trial of the case unless it be held that Act 267 of 1914 of the statutes of Louisiana is applicable to and controls the dissolution of the Porter-Wadley Lumber Company, an Arkansas corporation dissolved in accordance with the laws of Arkansas.

7.

That said act so interpreted and the refusal of the court to give effect to the law of Arkansas violate and are contrary to Section 1, Article 4, of the constitution of the United States, which requires full faith and credit be given in each

State to the public acts, records, and judicial proceedings of every other State, and accordingly, petitioners allege that said act, 267 of 1914 of Louisiana, as interpreted is unconstitutional, null and void.

8.

Petitioners further aver that said reservation of mineral rights was a binding valid contract between respondent and petitioners at the time of its execution, and the rights so reserved became vested in petitioners and the interpretation of Act 267 of 1914 of the Legislature of Louisiana by the Court of Appeals, Fifth Circuit, and the reasons given in said opinion change the terms and conditions of said contract and annul the rights vested in petitioners thereunder in violation of Article 1, Section 10, of the constitution of the United States.

9.

Respondent expressly acknowledged the title of petitioners by accepting rentals and royalties from petitioners in accordance with the terms of said mineral reservation and by joining in a written contract wherein respondent did "ratify, affirm and approve the execution" by petitioners of a written lease covering the mineral rights reserved by petitioners, authors in title of the property in controversy, and under the jurisprudence of Louisiana, respondent thereby acknowledged petitioners' title and waived prescription, which ratification "being in writing would have been sufficient to take the lease out of prescription even if prescription had already run". (*White* v. *Ouachita Natural Gas Company*, 177 La. 1052); the Court of Appeals, in its opinion, contrary to the jurisprudence of Louisiana, held "acceptance of rentals under such circumstances does not resurrect mineral servitudes which have become prescribed either on the theory of tacit renunciation or of estoppel".

10.

Petitioners aver that a correct decision of the issues presented by this case will determine not only the rights of the litigants in the property in controversy, but will likewise be decisive of the rights, titles, and interests of various persons who have acquired rights in large tracts of land subject to the same mineral reservation.

11.

Petitioners aver that the opinion of the Court of Appeals held that the Porter-Wadley Lumber Company, though dissolved in accordance with the laws of Arkansas, the State of its creation, was still an existing corporation in the State of Louisiana, which opinion was contrary to and inconsistent with its decree against petitioners as individual stockholders of said corporation in a suit in which the corporation was not cited or made a party litigant.

12.

Petitioners show that the opinion of the Court of Appeals is erroneous for the reasons and on the grounds above indicated and as set forth in the assignments of error (R. 217-220, 269-273) and set forth in detail in the briefs filed herewith, and this Honorable Court should require said cause to be certified to it for review and determination in accordance with the provisions of the acts of Congress.

WHEREFORE, and for the reasons set forth in the brief in support hereof, petitioners respectfully pray that a writ of Certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals, Fifth Circuit, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record

in all proceedings in the case numbered and entitled on its docket, 9300, *Porter-Wadley Lumber Company, et al., Appellants* v. *C. Orbin Bailey, Appellee,* and that the said opinion and decree of the Court of Appeals, Fifth Circuit, may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem mete and just, and your petitioners will forever pray.

JOHN B. FILES,
JOSEPH H. JACKSON,
Counsel for Petitioners.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 358

PORTER-WADLEY LUMBER COMPANY, ET AL.,
Petitioners,

vs.

C. ORBIN BAILEY.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The opinion of the Court of Appeal, Fifth Circuit, is reported in the Federal Reporter, entitled, *Porter-Wadley Lumber Company, et al.*, v. *C. Orbin Bailey,* 110 Federal Reporter (2nd series) 974 (R. 264).

II.

Jurisdiction.

(1) The date of the decree to be reviewed is April 1st, 1940 (R. 267), the application for rehearing was denied June 13, 1940 (R. 274).

(2) a. It is contended that the opinion and decree violates Section 1 of Article 4 of the Constitution of the United States in denying full faith and credit to the dissolution proceedings of the Porter-Wadley Lumber Company, made

in accordance with the laws of Arkansas, the state creating the corporation;

b. Said opinion and decree annul valid contractual rights of petitioners in violation of Section 10, Article 1, of the Constitution of the United States;

c. That the opinion and decree are erroneous in failing to hold that the plea of ten years prescription filed by respondent did not apply to the rights of petitioners, but if applicable, same was interrupted by a written contract signed by respondent with petitioners, and by acceptance of rentals and royalties from petitioners, and by the minority of Margaret Porter, one of the petitioners, in accordance with the jurisprudence of Louisiana.

d. The opinion and decree are inconsistent in holding that the mineral rights were vested in the Porter-Wadley Lumber Company in a suit by respondent against petitioners, the sole stockholders of said corporation, without making the corporation a party to the proceeding.

(3) The statute believed to sustain the jurisdiction in this case is Section 24 of the Judicial Code, as amended by Act of February 13, 1925, 43 Stat. 938; January 31, 1928, 45 Stat. 54; June 7th, 1934, 48 Stat. 926.

(4) Cases believed to sustain appellate jurisdiction of the Supreme Court are: *Forsyth* v. *Hammond,* 166 U. S. 506, 41 L. Ed. 1095; *Title Guaranty & Surety Company* v. *U. S.,* 32 Sup. Ct. 168, 222 U. S. 401, 56 L. Ed. 248; *National Surety Company* v. *Cobb,* 66 F. (2d) 323; *Pease* v. *Peck,* 18 Howard 595, 15 L. Ed. 518; *Relf* v. *Rundle,* 103 U. S. 22, 26 L. Ed. 337; *Trustees of Dartmouth College* v. *Woodward,* 4 Wheat. 514, 4 L. Ed. 629.

III.

Statement of the Case.

February 12th, 1916, the Porter-Wadley Lumber Company, an Arkansas corporation, sold the land in contro-

versy, including numerous other tracts of land, to the German-American Investment Company, reserving for thirty-five years certain mineral rights and privileges in consideration of the payment of one-half of the net amount derived from the sale of the development of said minerals to respondent and his authors in title (R. 85). May 3rd, 1917, the Porter-Wadley Lumber Company was dissolved in accordance with the laws of Arkansas (R. 126-127). May 28th, 1917, the German-American Investment Company changed its name to the North American Investment & Development Company, and on February 8th, 1918, transferred said property to G. R. Wise (R. 81), which contains the reservation subject to the following conditions:

> "This reservation being the reservation made in the deed to the grantor in their deed from the Porter-Wadley Lumber Company, and the grantor, the North American Investment and Development Company, hereby transfers and assigns to the grantee herein, his successors or assigns, all its right in and to one-half of all the net revenue that may be obtained from the sale of the oil, gas, sulphur, and minerals herein reserved."

September 3rd, 1919, G. R. Wise sold the property to H. L. Munn, subject to the following reservation:

> "It is understood and agreed that I am only transferring such mineral rights as acquired by me in deed from the North American Investment and Development Company as per records of Webster Parish, Louisiana" (R. 79).

March 25th, 1924, H. L. Munn sold the same property to C. Orbin Bailey, respondent. The trial judge, in his opinion (R. 206), said:

> "It is also stipulated that plaintiff acquired from H. L. Munn, and that H. L. Munn acquired from G. R. Wise, and that G. R. Wise acquired from the North

American Investment and Development Company; that the reservation made by the Porter-Wadley Lumber Company was referred to in all of said transfers."

February 23rd, 1926, petitioners executed an oil and gas lease to W. R. Ramsey for three years, which lease was concurred in March 13th, 1926, by C. Orbin Bailey, as follows:

"Now comes C. O. Bailey, husband of Eva Leonard, resident of the above Parish and State, who declared that, for the considerations set forth in the above and foregoing oil and gas lease, he does hereby ratify, affirm and approve the execution thereof by said Lessors to W. R. Ramsey, insofar as the same covers and affects the rights acquired and the minerals in and to an undivided — ¼th interest in the net revenues derived from the sale or lease of the mineral rights in and to the NE ¼ of the SW ¼ of Section 29, Township 23 North, Range 9 West, Webster Parish, Louisiana, in accordance with reservation made by the Porter-Wadley Lumber Company, in its deed with the German-American Investment and Development Company of date February 12, 1916, and acquired by me by mesne conveyances from said German-American Investment and Development Company.

"Thus Done, Read, and Signed in the presence of S. E. Munn and R. M. Franks, competent attesting witnesses on this, the 13th day of March, 1926.

C. O. Bailey."

In accordance with the terms of this lease, a well was drilled December 29, 1926, to the approximate depth of 4750 feet.

January 5th, 1928, appellants executed an oil and gas lease to C. H. Lyons, et al. (R. 102). In accordance with the terms of this lease, the drilling of a well was commenced April 9th, 1928, which produced gas in paying quantities until May 19, 1930, from which production C. O. Bailey received one-half of the net proceeds. June 9th, 1930, appel-

lants executed an oil and gas lease to the Pure Oil Company for a period of three years expiring June 9th, 1933, and C. O. Bailey received under this lease one-half of the net bonuses, rentals and royalties. November 29th, 1933, appellants executed an oil and gas lease to the Louisiana Oil Refining Company (R. 108) for a primary term of five years terminating November 29th, 1938.

The record shows that C. O. Bailey received from appellants one-half of the net proceeds derived from the bonuses, rentals and royalties from said property, as follows: $500.00 on July 10, 1930; $240.00 on November 30, 1935; $32.00 on December 9, 1935; $100.00 on November 5, 1936; $20.00 on November 5, 1937, and $200.00 on April 28, 1938.

Respondent ratified, approved and concurred in a mineral lease by petitioners covering said mineral rights December 29th, 1926, for one-half of the consideration therein set forth; Margaret Porter, one of petitioners, was a minor, which suspended the current of prescription under the law and jurisprudence of Louisiana; that said mineral reservation was in fact and in law a leasehold estate against which prescription does not run, and petitioners have not sold and respondent has not acquired said rights.

IV.

Specification of Errors.

(1) The Court of Appeals erred in holding that the Porter-Wadley Lumber Company, an Arkansas corporation, which was dissolved in accordance with the laws of the State of Arkansas, continued as a corporation in Louisiana by virtue of the provisions of Act 267 of 1914 of the Acts of Louisiana,[1] contrary to the provisions of

[1] See appendix for copy of Act.

Section 1, Article 4, of the Constitution of the United States, and contrary to the established jurisprudence of Louisiana and prior decisions of the Court of Appeals.

(2) That the Court of Appeals erred in holding that the respondent was the owner of the mineral rights thereby divesting petitioners of their rights under said reservation and impairing the contractual rights vested in petitioners in violation of Article 1, Section 10, of the Constitution of the United States.

(3) The Court of Appeals was in error in holding that a written ratification, approval, and concurrence by respondent with petitioners in a written mineral lease, under which respondent received benefits and rentals from petitioners, did not constitute an estoppel or an interruption or renunciation of prescription in accordance with the decision of the Supreme Court of Louisiana in *White* vs. *Ouachita Natural Gas Company,* 177 La. 1052, and subsequent approving decisions.

(4) That the opinion of the Court of Appeals held that the Porter-Wadley Lumber Company, though dissolved in accordance with the laws of Arkansas, the state of its creation, was an existing corporation in Louisiana and was the owner of said mineral rights, which opinion was inconsistent with its decree which cancelled said mineral rights in a suit against petitioners, sole stockholders of the corporation, when the corporation was not cited or made a party to the suit.

V.

ARGUMENT.

First Assignment.

Under the laws of Louisiana a stipulation in a deed by which a grantor reserves oil, gas and other minerals from

the sale of the land made by him vests in him a servitude upon the land under which he has the right to go upon it and extract such oil, gas and minerals and thereupon become the owner of them. Such a servitude is extinguished by the non-usage of the same during ten years (*Revised Civil Code*, Art. 789). This is the prescription of ten years *liberandi causa*. Prescription, however, does not run against minors except in the cases specified by law (*Revised Civil Code*, 3554) and it is clearly established by the jurisprudence of Louisiana that such a servitude is not prescribed in ten years where one of the co-proprietors is a minor as the minority of one co-proprietor preserves the rights of all (*Revised Civil Code*, Art. 802; *Sample* v. *Whittaker*, 172 La. 722, 135 So. Rep. 38; *Sanders* v. *Ohio Oil Co.*, 155 La. 740, 99 So. Rep. 583).

As heretofore pointed out, one of the stockholders of Porter-Wadley Lumber Company was, upon dissolution, a minor. If, therefore, the reservation in question is to be considered as a servitude and not a lease, as was done by the court below, yet the servitude is not prescribed if upon dissolution of the corporation, its assets vested in the stockholders.

As appears from the opinion of the Court of Appeals, petitioners contended that upon the dissolution of the corporation according to the laws of Arkansas, its property passed directly to the stockholders and since one of them, Margaret Porter, was a minor and did not attain her majority until 1932, the prescription of ten years was suspended, not only as to her but as to her co-owners as well.

Petitioners contended in the trial court (R. 219) and in the Circuit Court of Appeals (R. 269, *et seq.*) that the ownership of the assets of the dissolved corporation was controlled by the laws of Arkansas, the domicile of the corporation, and that a refusal of the courts to determine this

ownership or the existence of the corporation by the laws of Arkansas violated the full faith and credit clause of the Constitution of the United States (Art. 4, Section 1).

The Court of Appeals has held that since the Supreme Court of the State of Louisiana has decided contrary to petitioners' contentions (*Munn* v. *Wadley*, 192 La. 874) in another case with a similar reservation it was bound to follow that determination (*Erie R. Co.* v. *Tompkins*, 304 U. S. 64). This, it is submitted, is manifest error. What the law of Arkansas is, clearly presents no local question to be determined by the Louisiana courts nor is the application *vel non* of the full faith and credit clause of the Constitution of the United States a question of local law to be determined by the Louisiana Supreme Court. Ordinarily, we believe it may be said, that the law of Louisiana alone will be examined to determine the ownership of an immovable situated in Louisiana but if that owner is a legal person or a corporation, its identity must be determined by the laws of the sovereign power creating it.

When the State of Arkansas granted a charter to the incorporators of Porter-Wadley Lumber Company, there resulted a contract by which the laws of Arkansas guaranteed to those incorporators that upon the dissolution of the corporation without creditors, its assets vested in the stockholders. Even the Legislature of Arkansas could not subsequently deprive the stockholders of the corporation of their vested rights (*Dartmouth College* case, 4 Wheat. 514, 4 Law Ed. 629).

Under the laws of Arkansas in effect at the time this corporation was dissolved the corporation became totally extinct (Acts of Arkansas 1893, page 265, Section 4). The procedure for dissolution followed in this case is expressly authorized by Section 1823, Crawford and Moses Digest. When such procedure is invoked and accomplished where no

creditors are involved, the property of the dissolved corporation reverts to the stockholders. (*Jameson* v. *Henderson*, 189 Ark. 204, 71 S. W. (2d) 969.)

If upon dissolution of the corporation it became totally extinct and its assets became vested in its stockholders as petitioners contend, the mineral right in controversy is now owned by the petitioners because under the law of Louisiana the minority of one of the stockholders has prevented the running of prescription. If, therefore, prescription has run in this case as the Court of Appeals has held, it is because the assets of this corporation did not upon dissolution vest in the stockholders but remained in the corporation.

A corporation is an artificial being which exists only by virtue and in contemplation of law, and by law we mean the law of the particular sovereign power which created the corporation. It is well settled in all jurisdictions that a corporation which has been dissolved is as if it did not exist and the result of the dissolution cannot be distinguished from the death of a natural person in its effect (*Okla. Natural Gas Co.* v. *State of Okla.*, 273 U. S. 257, 71 Law. Ed. 635, 14A *C. J.* 1150, American Jurisprudence, Vol. 13, page 1191). A non-existent person, whether natural or artificial, can have none of the attributes of a person in being. Neither a dead corporation nor a dead natural person can enjoy the right of ownership. It would seem to be fundamental and the principle is expressly recognized by Louisiana law (Revised Civil Code 493) that the right of ownership necessarily supposes the existence of a person in whom this right exists whether the owner be a real person as an individual or a civil person as a corporation.

The decision of the Supreme Court of Louisiana in the case of *Munn* v. *Wadley, supra,* which the Circuit Court of Appeals holds is controlling here says that the real right in controversy was never vested in the stockholders of the

dissolved corporation because Section 30 of Act 267 of 1914 of the Louisiana Legislature is applicable to foreign as well as to domestic corporations and provides that dissolved corporation shall remain in existence for certain purposes. Therefore, the decision of the Court of Appeals which follows the decision of the Supreme Court of Louisiana squarely presents the question whether the laws of Louisiana may prolong the corporate existence of an Arkansas corporation which the decisions hold, in spite of the Arkansas statute which ends its corporate existence and Article IV, Section 1, of the Constitution of the United States.

Petitioners contend that neither the Legislature nor the courts of Louisiana may prolong the existence of a foreign corporation and that the decision of the Supreme Court of Louisiana in *Munn* v. *Wadley, supra,* is not only fundamentally unsound but is contrary to other holdings of the same court and that the decision of the Court of Appeals to the same effect is likewise inconsistent with former decisions of this same court.

The Supreme Court of Louisiana in *Wilkinson* v. *Wogan,* 162 La. 133, 110 So. 176, expressly held that the dissolution of a corporation is "controlled by its charter and the laws of the sovereignty by which it was created". The court further stated:

> "The courts of one state or country have no jurisdiction or power to dissolve a corporation created by another state or country. The fact that the foreign corporation does business or owns property in the state where the action to dissolve is brought does not give the court the power to dissolve it."

The correctness of the principle stated by this decision is universally recognized and requires no citation of authority. Likewise, it is clear that the dissolution of a corporation in accordance with the laws of its domicile has the effect of

dissolving it wherever it is doing business, notwithstanding the statutes of the State in which it is doing business provide for a continuance of corporate existence after dissolution. (14A *Corpus Juris*, page 1150, 1349.) Aside from the case of *Munn* v. *Wadley*, there is no decision of the Louisiana Supreme Court in the least inconsistent with the principles just stated.

It is submitted further that the decision of the Circuit Court of Appeals in this case is inconsistent with the decision of the same court in the case of *National Surety Company of New York* v. *Cobb*, 66 F. (2d) 323. In that case the court was considering whether or not a judgment rendered by the courts of Louisiana against a foreign corporation authorized to do business in Louisiana but which had been prior to the filing of the suit dissolved in accordance with the laws of New York, the State of its creation, was valid. The court after considering that the laws of New York as distinguished from the laws of Louisiana made no provision for continued corporate existence after dissolution concluded that these laws were controlling and in holding the judgment void said:

> "We think it equally clear that dissolution under the insurance laws brings about the civil death of the corporation and that suits thereafter brought and judgments thereafter obtained upon service on statutory agents designated in other states are nullities."

Although the statutes of Louisiana under which this dissolved corporation qualified to do business in Louisiana constituted the Secretary of State of Louisiana the agent for service of process upon such corporation as long as any outstanding obligation of the corporation continued, yet the court recognized as a fundamental proposition that a dissolved corporation is *civiliter mortuus*, and that if by the laws of the State of its creation it became totally extinguished, it was equally extinguished in every other State

where it might have been doing business, and the same act of Louisiana which by the decision complained of continues the corporate existence of the Arkansas corporation did not continue the corporate existence of the New York corporation.

The Supreme Court of Louisiana was influenced in its decision by the argument that real estate devolves from a decedent by virtue of the law of the State where the property is situated and that the law of the domicile of the owner is not controlling. With this principle there is, of course, no complaint. Petitioners contend that where a corporation is dissolved its property does not "devolve" within the meaning of the principle just stated and even if it does, yet under Louisiana law it devolved upon the same persons that it did under Arkansas law. The complaint we make is not that under Louisiana law it devolved upon different persons from those provided by Arkansas law, but that the decision the Supreme Court of Louisiana held that it never devolved at all but remained in a non-existent corporation.

It is frequently stated that there are only two modes known to the law by which title to property can be acquired; namely, descent and purchase. An estate "descends" or devolves merely by operation of law when the owner dies intestate. If, however, he dies testate, the property does not devolve or descend by operation of law but the estate passes from the former owner to the new owner by purchase (16 *American Jurisprudence* 769; *Barnetzs, Lessee,* v. *Casey,* 7 Cr. 456, 3 Law Ed. 403; *Gardiner* v. *Collins,* 2 Peters 58, 7 Law Ed. 347; 18 *Corpus Juris, Verbo Devolve,* 1034; 12 *Words & Phrases, Verbo Devolve,* 372.

Under this principle where the rights to the property become fixed in the stockholders by virtue of the charter contract, the property of the corporation upon dissolution no more devolves than does the property of a natural per-

son who dies testate. In either case the property is transferred by purchase and not by descent.

The share of the stockholder is "the individual interest of the stockholder constituting his right to a proportional part of the dividends when declared and to a proportional part of the effects of the corporation when dissolved after payment of its debts (*Minot* v. *Philadelphia, Wilmington & Baltimore R. Co.,* 85 U. S. 206, 230, 21 Law Ed. 896) and when the charter is terminated and the legal life of the corporation ended no property rights are changed in the least but the result is merely that this death of the corporation leaves all the property to the shareholders after the payment of the corporation's debts, and each shareholder takes his proportionate share in accordance with the law of the domicile of the corporation. (*Rhode Island Hospital* v. *Doughton,* 270 U. S. 69, 81; 70 Law Ed. 475; *Lakeshore & Michigan S. R. Co.* v. *Smith,* 173 U. S. 684, 698; 43 Law Ed. 858; *First National Bank* v. *Main,* 284 U. S. 312, 76 Law Ed. 313.)

The dissolution of a corporation merely destroys the stock as such and under the modern equitable view substitutes the thing which the stock represented; that is, an interest in the property. (13 *American Jurisprudence* 1198; *Pewabic Mining Company* v. *Moore,* 145 U. S. 349, 36 Law Ed. 732; *Church* v. *United States,* 136 U. S. 1, 34 Law Ed. 478.)

The rule that upon the death of a corporation the stockholders become the owners of its assets subject to the payment of the debts of the corporation is what is known in the common law jurisprudence as the trust fund doctrine and this doctrine has always been the law in Louisiana. (13 *American Jurisprudence* 1198; 47 A. L. R. 1361; *Citizens Bank & Levee Steam Cotton Press Company,* 7 La.

Ann. 286; *Stark* v. *Burke,* 5 La. Ann. 741; *Burke* v. *Wall,* 29 La. Ann. 38; *Hincks* v. *Converse,* 37 La. Ann. 484.)

The opinion of the Supreme Court of Louisiana does not hold that the title passed from the corporation to any other person than the stockholders. It merely holds that the title remained in the corporation after its dissolution and that it would so remain until transferred from the corporation by liquidators or a judgment of the court. Petitioners complain, therefore, not because under the decision the property was held to devolve under the law of Louisiana instead of the law of Arkansas, but because under the decision the property has not devolved at all but has remained in a nonexistent legal person. Neither the opinion of the Louisiana Supreme Court nor that of the Circuit Court of Appeals ventures to state how Porter-Wadley Lumber Company could be an extinct corporation in Arkansas and an existing corporation in Louisiana.

Whether or not a foreign corporation is to be permitted to acquire and hold property in the State of Louisiana is a question of policy to be determined by the laws of that State, but when it permitted the corporation to come into the State and to acquire property the corporation came in and continued in the exact legal status fixed by the laws of the State of Arkansas. The power to continue corporate existence is but a corollary of the power to create it and it is submitted that Louisiana law may no more continue the corporate existence of an Arkansas corporation than it can create that corporation. To admit the correctness of the underlying principle of this decision is to state that the same corporation, if doing business in every State of the Union, may be totally different in each of the forty-eight States.

In *Canada Southern Railroad Co.* v. *Gebhard,* 109 U. S. 527, 27 Law Ed. 1020, this Court said:

"A corporation 'must dwell in the place of its creation, and cannot migrate to another sovereignty', Bank *v.* Earle, 13 Pet. 588, though it may do business in all places where its charter allows and the local laws do not forbid. R. R. Co. *v.* Koontz, 104 U. S. 12 (XXVI., 645). But wherever it goes for business it carries its charter, as that is the law of its existence. Relf *v.* Rundel, 103 U. S. 226 (XXVI., 339); and the charter is the same abroad that it is at home. Whatever disabilities are placed upon the corporation at home it retains abroad, and whatever legislative control it is subjected to at home must be recognized and submitted to by those who deal with it elsewhere. A corporation of one country may be excluded from business in another country. Paul *v.* Virginia, 8 Wall., 168 (75 U. S., XIX, 357), but, if admitted, it must, in the absence of legislation equivalent to making it a corporation of the latter country, be taken, both by the government and those who deal with it, as a creature of the law of its own country, and subject to all the legislative control and direction that may be properly exercised over it at the place of its creation. * * * It follows, therefore, that anything done at the legal home of the corporation, under the authority of such laws, which discharges it from liability there, discharges it everywhere."

The strained construction which the Supreme Court of Louisiana has placed upon Section 30 of Act 267 of 1914 in holding that by reason of this statutory enactment the property remains in the corporation though dissolved results from the desire of that court to achieve what it considers the policy of the Louisiana law to avoid complex estates in property. It, therefore, applies the law of prescription against servitudes of the character involved here wherever there is any apparent justification for so doing. The court, however, has disregarded the principle that neither it nor the laws of Louisiana can continue the cor-

porate existence of this corporation. When the Louisiana Supreme Court and the Circuit Court of Appeals held that the Louisiana statute continued the corporate existence and refused to hold that the Arkansas statute determined that corporate existence, they violated Article IV, Section 1, of the Constitution of the United States.

Under this provision of the Constitution each State for itself must settle the policy of its laws as to the creation, the existence and the dissolution of its domestic corporations. When it has determined these questions it becomes the inescapable duty of every other State under the constitutional provision relied upon to give full faith and credit to the matters so settled.

This constitutional requirement implies that the public acts of a State shall be given the same effect by the courts of every other State that they have by law and usage at home. *Chicago R. R. Co.* v. *Wiggins Ferry Co.*, 119 U. S. 622, 30 Law Ed. 519; *Christmas* v. *Russell*, 5 Wall. 290, 18 Law Ed. 475.

If the dissolved corporation ceased to exist upon its dissolution and thereafter was incapable of exercising or enjoying the right of ownership, the title to the real right involved herein passed from it, and there is and has been no contention that it passed to any other person under Louisiana law. While the nature of the real right in controversy and the prescription applicable to it are, of course, to be determined in accordance with Louisiana law and the decisions of the Supreme Court of that State, yet that court cannot, in refusing to give effect to the laws of Arkansas in a case where they are controlling, convert that question into a question of Louisiana law and thus override the full faith and credit clause of the Constitution of the United States.

In the case of *Sistare* v. *Sistare*, 218 U. S. 1, 54 Law Ed. 905, this Court considered the effect of this constitutional

provision as it applied to a judgment rendered in the State of New York and sought to be enforced in the State of Connecticut. A valid judgment had been rendered in New York which condemned the defendant to pay alimony but when action was commenced in the courts of Connecticut to recover the amount in arrears, the courts of that State held that the installments of alimony did not constitute debts and were not subject to be collected by execution upon the contention that the statutes of New York provided for a subsequent modification of the judgment by the courts of that State.

This court, however, held that where the authority to modify was not expressly conferred by statute or was not reserved in the decree, such judgment created vested rights and that under the full faith and credit clause of the Constitution, which is obligatory upon the courts of another State in which the judgment is sought to be enforced, it is the clear duty of the courts to recognize it as an enforceable judgment.

In *Converse* v. *Hamilton*, 224 U. S. 243, 56 Law Ed. 749, an action was begun in the State of Wisconsin to enforce double liability of stockholders in an insolvent Minnesota corporation under a provision of the laws of Minnesota. Assessments had been judicially levied in Minnesota upon the stockholders. When the courts of Wisconsin refused to enforce these, the matter was taken to this court upon writ of error and this court, in holding that the laws and proceedings of the State of Minnesota relied upon brought the case within the constitutional provision claimed, said:

> "Thus, the liability to which they relate is contractual not penal. The proceedings were had with adequate jurisdiction to make them binding upon the stockholders in the particulars before named * * *. *And what the law of Wisconsin may be respecting the relative rights and obligations of creditors and stockholders of corporations of its creation, and the mode and*

means of enforcing them, is apart from the question under consideration." (Emphasis ours.)

In *Royal Arcanum* v. *Green*, 237 U. S. 531, 59 Law Ed. 1089, your Honors held that the laws of Massachusetts and the charter issued thereunder controlled the rights and obligations of a member of the corporation who became such in the State of New York and that the laws of New York were not applicable in determining his obligations under the charter.

The duty to give full force and effect to the public act of the State of Arkansas is as obligatory as the similar duty in respect to the judicial proceedings of that State. *Smithsonian Institute* v. *St. John*, 214 U. S. 19, 28, 53 Law Ed. 892, 897; *Chicago & Alton Railroad Co.* v. *Wiggins Ferry Co.*, 119 U. S. 615, 622, 30 Law Ed. 519; *Mills* v. *Duryee*, 7 Cr. 581, 3 Law Ed. 411.

This is not a case of misinterpreting a statute of Arkansas without denying its validity. It is a case where the Louisiana court and the Court of Appeals following that decision refused to apply the Arkansas statute, and since by that statute the Porter-Wadley Lumber Company ceased its existence at the time of its dissolution, the decisions complained of clearly deny full faith and credit to the statute which the Constitution guarantees.

Second Assignment.

The decision of the Court of Appeals in holding that the contract whereby the Porter-Wadley Lumber Company reserved the mineral rights in the nature of a leasehold interest for thirty-five years null and void impairs "the obligation of a contract" and violates Article 1, Section 10, of the Constitution of the United States.

The court held that the contract of date February 12, 1916, as part consideration of a sale of lands by the Porter-

'adley Lumber Company to the German-American Invest-ent Company for thirty-five years was null and void.

Article 1764 of the Louisiana Civil Code declares:

> "All things that are not prohibited by law may legally become the subject of contract."

The Supreme Court of Louisiana, in the *Pioneer Gas 'ompany* case, 173 La. 313, said that the distinction be-ween an assignment and a sublease is that in an assign-ient all interest is transferred, and in a sublease an in-erest is retained which imposes some obligation such as) pay rent or an overriding royalty. The court stated:

> "The reason why an obligation to pay an overriding royalty, or excess royalty, in a transfer of a lease, either in whole or in part, and even though the transaction be called an assignment or a sale of lease, characterizes the transaction as a sublease and not merely an assignment, is that, in oil and gas leases, under the settled jurisprudence of this state, the payment of a royalty is the payment of rent, and is not the payment of a price for oil or gas rights, as if they were sold."

The reservation in controversy herein declares (R. 84):

> "The Porter-Wadley Lumber Company shall pay to vendee hereunder, his heirs, successors, or assigns, one-half of all the net revenue that may be obtained from the sale of the oil, gas, sulphur, and minerals herein reserved."

his, therefore, constituted a valid contract. If there is ny doubt about the proper interpretation of the contract, must be given that interpretation that will save the ontract.[2]

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[2] Louisiana Civil Code, Art. 2013; *Sporl* v. *New York Indemnity Co.*, 176 a. 363.

In *Queensborough* v. *Cazeau*, 136 La. 732, the Supreme Court of Louisiana said:

> "The manner in which one may dispose of one's property is here stated to be almost unlimited."

It appears under the settled jurisprudence of Louisiana giving a proper interpretation to said reservation, it is in the nature of a leasehold estate.

In *Gulf Refining Co.* v. *Glassell*, 186 La. 201, the court said:

> "It therefore appears to us that an oil and gas lease and farm lease are quite alike and should be placed in the same legal category, that is, leases, personal rights, and not real rights."

In *State* v. *Board of Administrators of Tulane*, 125 La. 432, the Supreme Court of Louisiana held that a valid lease contract may be made in Louisiana for a period of ninety-nine years.

This contract was binding between the parties and is the law governing them. At the time this reservation was made, there was no statute or decision of the court holding that the subject matter of said contract was illegal in Louisiana. After said contract was made and the rights thereunder became vested, no subsequent legislation or decision of the highest court could change the terms or conditions of said contract or annul the rights therein vested.[3]

This contract having been based upon the law of Louisiana at the time of its execution and under decisions of the Supreme Court of Louisiana existing at that time, no subsequent change of the position of the Supreme Court can affect the terms and conditions of the contract.[4]

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[3] *Walker* v. *State*, 12 Sup. Ct. Rep. 282; *Whaley* v. *Gailard*, 21 Sup. Ct. Rep. 572; *Gelpske* v. *Dubuque*, 1 Wall. 206, 17 L. Ed. 520; *Union Bank* v. *Oxford*, 90 Fed. 7, 10.

[4] *Muhlker* v. *N. Y. R. Co.*, 197 U. S. 570, 49 L. Ed. 872.

"When absolute rights of property have been acquired and vested by authority of law, no subsequent legislative action can divest this right. So, where a contract is made under the authority of law, the right of property acquired arises not from the law itself, but from the contract to which it pertains as an incident, and the law making power cannot divest the rights thus acquired, originating, not in the law itself, but in acts done under the law and which attach as incidents not to the law but to the contracts made under it."[5]

The contract having been legally made in accordance with the law prevailing at the time of its execution, the United States District Court is without right or authority to annul said contract and to divest appellants of the rights acquired by them pursuant thereto. This is a violation of Article 1, Section 10, of the Constitution of the United States.

Neither can the legislature establish such rules in regard to the management and disposition of the assets of a corporation by which the portion which belongs to stockholders shall be sequestered and diverted from the owners and thus injure vested rights.[6]

Third Assignment.

The above facts clearly show that petitioners are the owners of the rights in the mineral reservation. The various sales of the land from the German-American Investment Company by mesne conveyances to C. Orbin Bailey, respondent, specifically acknowledge and recognize petitioners and their authors in title as the owners of said mineral rights. These sales were not made "subject to" said mineral reservation, but definitely reserved said rights.

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[5] *Fletcher* v. *Peck*, 6 Cranch 87, 3 L. Ed. 162.

[6] *Lathrop* v. *Stedman*, 13 Blatch (U. S.) 134; 15 Fed. Cases, No. 8519.

The Supreme Court of Louisiana, in discussing a similar reservation,[7] said:

> "In the course of the opinion rendered in the case it was said that inasmuch as the mineral rights were actually *reserved* from the sale to John Murray and wife, the prescription was interrupted as to a part of the land which they bought."

The Louisiana court held that where mineral rights were reserved in a sale it was an interruption of prescription. In accordance with this authority, the record shows interruptions of prescription February 12th, 1916, the date of the reservation (R. 92-93), by reservation in the sale to G. R. Wise (R. 82), reservation in the sale from Wise to H. L. Munn (R. 80), reservation in the sale from H. L. Munn to C. O. Bailey, respondent (R. 67). The record shows that said mineral rights were preserved by exercise and use. Wells were drilled by petitioners or under their authority December 29th, 1926, and April 9th, 1928, which produced gas in paying quantities until May 19th, 1930 (R. 199-200). The record shows that C. O. Bailey, respondent, executed a joint lease with petitioners February 23rd, 1926 (R. 245-246).

The record shows that the current of prescription was interrupted when C. Orbin Bailey, respondent, accepted rentals and royalties from petitioners under said mineral leases and development as follows: royalty check April 12th, 1929, $27.83; royalties of a gas well April 22nd, 1929, $12.17; $500.00 under lease to Pure Oil Company July 10th, 1930; rental check November 30th, 1935, $240.00; rental check December 9th, 1935, $32.00; rental check November 5th, 1936, $100.00; rental check November 5th, 1937, $20.00; rental check under lease to Arkansas Fuel Oil Company April 28th, 1938, $200.00 (R. 200-201).

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[7] *Lewis* v. *Bodcaw Lumber Company*, 167 La. 1067.

Article 3520 of the Louisiana Civil Code reads:

> "Prescription ceases likewise to run whenever the debtor or possessor makes acknowledgment of the rights of the person whose title they prescribe."

The Supreme Court of Louisiana held:

> [8] "The period of prescription may be interrupted by a written acknowledgment on the part of the obligor, but when so interrupted, it begins anew from the date of the acknowledgment."

Article 3520 of the Louisiana Civil Code was held by the Louisiana Supreme Court to apply to the acknowledgment of mineral rights.[9]

The Louisiana Supreme Court specifically held that a joinder or concurrence in an oil and gas lease extending beyond the prescriptive period is an acknowledgment by the land owner during the term of this lease, and that the prescription of ten years begins to run from the termination of the lease,[10] so, when C. Orbin Bailey, respondent, joined in and concurred in a written lease with petitioners February 23rd, 1926, for a period of three years, it was an acknowledgment of petitioners' rights until February 23rd, 1929, and that prescription of ten years began to run from February 23rd, 1929, and this suit was filed May 12th, 1938, within said ten year period.

It is clear that prescription has not run, first, because of the reservations made in the various transfers, second, by exercise and development of the minerals, third, by the express ratification and concurrence by respondent in a lease with petitioners, fourth, by the acceptance from petitioners of royalties and rentals under leases and develop-

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[8] *Nabors Oil & Gas Co.* v. *Louisiana Oil Ref. Co.*, 151 La. 361.

[9] *Frost Lumber Industries* v. *Union Power Co., Inc.*, 182 La. 439.

[10] *Bremer* v. *North Central Texas Oil Co.*, 185 La. 918.

ment of said mineral rights, and fifth, by the concurrence and joinder in said lease dated February 13th, 1926, for a period of three years, or until February 13th, 1929, the date on which prescription, if it began to run, commenced and would not terminate until February 13th, 1939.

In its opinion, the Court of Appeals said:

> "His express ratification of the lease to Ramsey no more indicates an intention to renew than do his alleged implied ratifications of the three subsequent leases by acceptance of rentals thereunder. Acceptance of rentals under such circumstances does not resurrect mineral servitudes which have become prescribed, either on the theory of tacit renunciation or of estoppel."

The Court of Appeals cited as authority for its opinion *English* v. *Blackman,* 189 La. 255. The Court of Appeals holds that under Louisiana law, a written acknowledgment or acceptance of benefits under written contracts does not operate as a renunciation of prescription or of estoppel when prescription has already run. This statement, in our judgment, is at variance with numerous decisions of the Supreme Court of Louisiana. In *English* v. *Blackman, supra,* cited by the Court of Appeals, the Louisiana Supreme Court quoted from a previous decision[11] as follows:

> " 'But the agreement between H. H. Nolan, then owner of the land, and the heirs of A. L. Smith, and the continual use by Smith and his assigns of the gas produced from other wells on the leased land, was a constant interruption of the prescription; and *indeed Nolan actually stipulated for and accepted the benefits of the lease. This was therefore as full and complete an acknowledgment of the lease as could be wished for; and, being in writing, would have been sufficient to*

[11] *White* v. *Ouachita Natural Gas Company,* 177 La. 1052.

take the lease out of prescription, even if prescription had already run.' "

and the Louisiana court further said:

> "Mr. English had accepted benefits under the 1932 lease which indicated that he not only had recognized the interest of his apparent co-lessors, but had apparently intended to interrupt the running of prescription."

In the *English* case, the Louisiana Supreme Court quoted from a previous decision as follows:

> "* * * the fact that English, the land owner, apparently joined the others in making the lease indicated that he not only had recognized their rights, but had consented to an interruption of prescription."

The Supreme Court of Louisiana, in *White* v. *Ouachita Natural Gas Company,* 177 La. 1052, held that one who accepts benefits under a lease fully and completely acknowledges the rights of the parties to that lease, "and, being in writing, would have been sufficient to take the lease out of prescription, *even if prescription had already run*".

The Supreme Court of Louisiana held in *Mulhern* v. *Hayne,* 171 La. 1006, that in a case where the owner of the land joined with the owners of one-half of the mineral rights in a lease for a term of years extending beyond the prescriptive period interrupted prescription. The court said:

> "Here the plaintiff, as the owner of one half of the minerals, joined the persons in whose favor the other half of said mineral rights had been reserved, in the execution of a lease, of all the oil and gas, to a third person, for a term of years extending beyond the prescriptive period, and to an indefinite future period, beyond that time, in the event oil or gas is produced from the leased land. By joining in this lease plaintiff

> thereby recognized all of the rights of his colessors, and he cannot escape the effect of his written, acknowledgment, which, in our opinion, we must hold to be an interruption of the then accruing prescription."

In accordance with these authorities, respondent, in executing the lease beyond the prescriptive period and accepting benefits therefrom, made "as full and complete an acknowledgment of the lease as could be wished for; and, being in writing, would have been sufficient to take the lease out of prescription, even if prescription had already run".

The opinion of the Court of Appeal, referring to petitioners, said:

> "They must prove Bailey's intention to create new rights, not only his recognition that they may have had some rights in the property."

We submit Bailey's intentions can only be proved by his acts. If "A" acknowledges "B" to be the owner of property, the acknowledgment being in writing, by the very case (*English* vs. *Blackman*) cited in the opinion of the Court of Appeals, intends to waive or renounce prescription because his acknowledgment "being in writing, would have been sufficient to take the lease out of prescription, *even if prescription had already run*".

We call the court's attention to the fact that in the *English* vs. *Blackman* case, *English* did not sign a joint lease, as was done by respondent in this case. The Louisiana court said:

> "If, in fact, English, who granted the 1925 servitudes, voluntarily joined the holders of the mineral interests under those servitudes in making the 1932 lease, which by its terms, if kept alive by the payment of the specified rentals, would expire long after the end of the ten-year prescription period applicable to the 1925 servitudes, *that was an acknowledgment of*

the existence of the rights of his co-lessors and indicates that he intended to interrupt the running of the prescription which he now pleads.''

Article 3460 of the Louisiana Civil Code reads:

> "One cannot renounce a prescription not yet acquired, but it is lawful to renounce prescription once it is acquired."

Article 3461 of the Louisiana Civil Code reads:

> "Such renunciation of prescription is either express or tacit. A tacit renunciation results from a fact which gives a presumption of the relinquishment of the right acquired by prescription."

The Court of Appeal, in discussing the above articles, said:

> "Apparently, appellants' theory is that such renunciation would operate in the same manner as an interruption of prescription, and would renew their servitude for ten years more, or longer. *The inconsistency of their position is that they claim to have been thus perpetuated in rights of which they had already been irrevocably divested by operation of law.*

Renunciation takes effect after prescription has run, but the above articles of the Civil Code declare that if prescription has been acquired it may be renounced "either expressly or tacitly". How can renunciation of prescription be made tacitly? It can only be done by the acts of respondent in accepting benefits from petitioners from the exercises or use by them of the minerals or from leases covering said rights. The Legislature of a state has the power and authority to declare the basis for renunciation, and the Legislature of Louisiana has definitely declared that renunciation of prescription may be done in two ways, one expressly and the other tacitly. The Court of Appeals declared that petitioners must prove Bailey's intention to

create new rights, "not only his recognition that they may have had some rights in the property". The Supreme Court of Louisiana said (*English* vs. *Blackman*):

> "An acknowledgment of the existence of the rights of his co-lessors indicates that he intended to interrupt the prescription which he now pleads."

If Bailey did not intend to create or acknowledge rights in the appellants, what was the purpose of his executing a joint lease? It could have no other purpose than to acknowledge the appellants' rights and to renounce any prescription that may have occurred. What would Bailey mean when he declared in writing that he "does hereby *ratify, affirm, and approve the execution* (of the lease) *by said lessors to W. R. Ramsey*" insofar as it affected the rights acquired by him in accordance with the reservation of the Porter-Wadley Lumber Company and the German-American Investment Company? If it was not a renunciation, what was it? What was the purpose of it? Why did he execute the lease for a consideration? Why did he acknowledge in writing that the lessors, appellants, had full authority and power to make a lease, which power and right he expressly ratified and approved?

These acts of respondent clearly show his intention to acknowledge the rights of petitioners and to interrupt the current of prescription. If it be held that prescription had run, the acts of the respondent show definitely a renunciation both expressly and tacitly.

The opinion in this case is tantamount to holding that the prescriptive rights in Louisiana are the same as peremptory rights; that prescription once occurring, the parties cannot renounce it. In other words, the effect of the opinion is that after the expiration of ten years, Bailey could not, by act or deed, tacit or express, waive prescription, renounce prescription, or recognize the rights of appellants. We sub-

mit that under the laws of Louisiana, Bailey could do this. He is not creating new rights. The rights already existed. He is simply renouncing his personal right or privilege to urge prescription in bar of the rights of appellants.

Bailey further declared his intention by accepting rentals from lessors covering the same rights under three subsequent leases. Having done this, could Bailey attack these leases? If he could not attack these leases, could he attack the title covered by the leases? If the law provides for a declaration against interest, if it establishes the principle of estoppel, if it provides that one may ratify a defective title or waive a person right (right to urge prescription), do not the written declarations and the continuous conduct of the plaintiff bar him from any attack upon the rights or title of appellants? The opinion holds that appellants "must prove Bailey's intention to create new rights". The fact that ten years has expired does not *ipso facto* divest appellants of their title. It requires an affirmative action on the part of Bailey to have these rights voided on the ground of prescription. Prescription is not self-operative. At the expiration of ten years, Bailey did not urge prescription. He expressly renounced it in writing as effectively as the English language can make it.

The plaintiff, having full possession of his faculties and not laboring under any legal disabilities, could he not "create rights" in others or waive his personal rights? His actions and his conduct and his written declarations do exactly this, if indeed, new rights were created, which we deny.

The statement in the opinion that the rights of appellants "had already been *irrevocably divested by operation of law*" is not in accordance with the law of Louisiana. Rights that are subject to prescription are not "irrevocably" divested because the party in whose favor prescription may have run may not plead prescription, may waive prescrip-

tion, and therefore, before the rights of one party have become lost and acquired by the other, they must be affirmatively urged and established.

The statement that such rights by prescription are "*irrevocably divested*" has no support in Louisiana law. The word "*irrevocably*" means that it cannot be recalled or revoked or annulled. Would it be contended that the plaintiff in this case could not revoke or waive prescription? Can it be contended in the face of the Louisiana Civil Code that he could not do this expressly or tacitly? Prescription, even though it had been acquired, may be so renounced.[12] One who relies on prescription must plead it. The court cannot supply it, and the proof must be clear.[13]

It is clear that prescription does not "*irrevocably*" divest title, but it may be waived, interrupted, or not urged. We submit that the opinion is erroneous.

Reservation is a Lease and Not a Sale

In *Rives* v. *Gulf Refining Company,* 133 La. 182, the court said:

> "It is immaterial by what name it is called, whether a lease, license, sale, contract, grant, deed of conveyance, a real right, an incorporeal right, a hereditament, a chattel interest, a chattel real, a right in land, or other name. *The court will look to the language used in the instrument aside from these terms so used, and determine its legal effect.*"

A lease is defined in Article 2674 of the Louisiana Civil Code as follows:

> "To let out a thing is a contract by which one of the parties binds himself to grant to the other the enjoy-

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[12] C. C. 3460, 3461; *Coon* v. *Brashear,* 7 La. 265; *Marioneaux* v. *Brugier,* 1 McGoin 257.

[13] C. C. 3426; *Ashbey* v. *Ashbey,* 41 Ann. 100; *White* v. *White,* 50 Ann. 104.

ment of a thing during a certain time, for a certain stipulated price which the other binds himself to pay him."

Article 2671 of the Louisiana Civil Code reads:

> "The price should be certain and determinate, and should consist of money. However, it may consist in a certain quantity of commodities, or even in a portion of the fruits yielded by the thing leased."

In *New Orleans* v. *Shakespeare,* 39 La. Ann. 1033, the court said:

> "A lease for fifty years, entire rental paid in advance and stipulation that improvements revert to city at termination of lease, held valid."

In *Palmer* v. *Bender,* 49 F. (2d) (2nd series) 316, the court said:

> "A mineral contract, whether in form of sale, assignment, or lease, conveys only right to property."

The reservation in this case is for a period of thirty-five years, and therefore is "the enjoyment of a thing during a certain time". The reservation provides that respondent shall receive one-half of the net amount derived from the sale or other disposition of the minerals or mineral rights, and is therefore "a portion of the fruits yielded by the thing leased". This reservation is not different from a paid-up lease for thirty-five years, and the rights and privileges of petitioners as the sole stockholders of the dissolved Porter-Wadley Lumber Company and C. Orbin Bailey, respondent, are similar to those of the lessor and lessee. The obligation to pay one-half of the net amount received from the development or sale of minerals is equivalent to a rental or royalty interest which runs with the land.

Fred A. Koch, representative of the German-American Investment Company, testified (R. 132) that it was in the nature of a lease.

The Supreme Court of Louisiana, in *Smith* v. *Sun Oil Company,* 165 La. 911, in interpreting an assignment of a mineral lease, held:

> "The fact that the Sun Company, as sub-lessor, and Elliott, sub-lessee, in their contract used the words 'grant, convey, transfer and assign' did not of itself make the contract an assignment merely or deprive it of the character of a sublease. * * * The conditions of and in the contract between the Sun Company and Elliott which made it a sublease and not merely an assignment, were that the Sun Company did not dispose of all of its rights and obligations under the original lease on the twenty acres of land, but granted to Elliott an interest less than its own and imposed upon him obligations under penalty of reversion to the Sun Company in addition to the obligations which Elliott assumed in favor of the original lessor."

In *Robinson* v. *Pioneer Gas Company,* 173 La. 320, the court said:

> "The distinction between an assignment of a lease and a sublease is that in an assignment the assignor transfers his entire interest in the lease insofar as it affects the property on which the lease is assigned, whereas, in a sublease, the original lessee, or sub-lessor, retains an interest in the lease insofar as it affects the property subleased by imposing some obligation upon the sub-lessee in favor of the sub-lessor, such as an obligation to pay an additional rent to the sub-lessor."

It may be argued that appellants did not buy these mineral rights from appellee but the reservation was made in favor of appellants by and with the consent of the appellee. A reservation has all of the qualities of a purchase and when appellee consented to the reservation it is identical with a grant by appellee to appellants of the mineral rights. As part of the consideration of the sale, appellee became the owner of the surface of the land unconditionally and

granted a qualified reservation to appellants of the mineral rights, and this reservation continues for thirty-five years only so long as one-half of the net proceeds was paid to appellee.

In the deed between the Porter-Wadley Lumber Company and the German-American Investment Company, the surface of the land was conveyed by the Porter-Wadley Lumber Company to the German-American Investment Company and the mineral rights were conveyed by the German-American Investment Company to the Porter-Wadley Lumber Company, because, by that very instrument, the title to the land became vested in the German-American Investment Company and the mineral rights in the Porter-Wadley Lumber Company, subject to certain conditions and obligations, to-wit: the payment of one-half of the net proceeds derived from the development or sale of the minerals or mineral rights for thirty-five years.

Can it be contended that the Porter-Wadley Lumber Company could have developed the property, sold or transferred the mineral rights, leased or subleased them, or made any other contract respecting said minerals or mineral rights for consideration and not pay one-half the net proceeds to the land owner? And will it be contended that if these payments were not made, that the land owner would not have a cause of action to set aside, cancel and annul and revoke said mineral reservation? The mineral reservation has existence and can continue only so long as these payments are made.

A reservation of the minerals could not be attacked by the land owner at any time within ten years subsequent to the date of said reservation, but the reservation as contained in this deed could be attacked and set aside by the land owner whenever the Porter-Wadley Lumber Company failed to comply with the conditions of the reservation and pay one-half of the net proceeds derived from the sale or de-

velopment of its minerals. The difference, therefore, is patent between the reservation contained in this deed and the reservation of mineral rights only. It can be interpreted in no other light than that it is in the same category as a leasehold estate, paid up for thirty-five years, subject to the condition that the holder of the mineral reservation pays one-half net proceeds derived from the development or sale of the minerals or mineral rights to the land owner.

The Supreme Court of this State upheld a stipulation in a deed and said:

> "The manner in which one may dispose of one's property is here stated to be almost unlimited."

Article 1764 of the Louisiana Civil Code declares:

> "All things that are not prohibited by law may legally become the subject of contract."

Article 2013 of the Louisiana Civil Code states that:

> "The real obligation created by condition annexed to the alienation of real property, is susceptible to all of the modifications that the will of the parties can suggest, except such as are forbidden by law."

The above reservation is not contrary to public policy, good morals, nor does it contravene a prohibitory law.

In *Sporl* v. *New York Indemnity Company,* 176 La. 363, the court said:

> "A contract capable of two interpretations, one saving and the other condemning it, must be given the interpretation saving and contract."

What is illegal about this contract? In *Gulf Refining Company* vs. *Glassell,* 186 La. 201, the court, in discussing an oil and gas lease, stated:

> "Oil and gas leases and farm leases are quite alike and should be placed in the same legal category, that is

leases * * * personal rights and not real rights, * * *."

This is the latest expression of the Supreme Court of Louisiana, and it has been cited by the United States Court of Appeals, Fifth Circuit, with approval.[14] It declares that oil and gas leases are personal contracts and are not servitudes. It is true that since this decision was rendered the legislature passed an act declaring oil and gas leases real rights, but this act was passed subsequent to the transaction involved in this case, and of course has no retroactive effect. Considering then that the oil and gas lease was, then, under the authority of *State* vs. *Board of Administrators of Tulane,* 125 La. 432, a valid lease contract may be made in this state for a period of ninety-nine years.

It is the policy of the courts[15] to give a contract which is the law between the parties, that interpretation which will make the contract enforcible and to carry out the intention of the parties, which in this case was testified to by Mr. Wadley, as representing the seller, and Mr. Koch, as representing the buyer, when the reservation in the deed was made.

While this contract may be in some respects unusual, it is nevertheless the law between the parties and should be enforced so long as it does not contravene good morals or public policy.[16]

It is clear, therefore, that the contract constitutes a reservation of a leasehold interest of a mineral right, less than the whole, equivalent to or in the same category as a lease-

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[14] *Pan-American Production Co.* v. *United Lands Co.,* 96 F. (2d) 28; *Sabine Lbr. Co.* v. *Broderick,* 88 F. (2d) 588.

[15] *Fallo, Inc.,* v. *Durr,* 4 La. App. 155; *Brown* v. *Gardner,* 157 So. 137; C. C. Arts. 1945 and 1950; *Boisseau* v. *Vallon,* 174 La. 492; *Ascension Red River Cypress Co.* v. *Red River Drainage District,* 149 La. 764; Succession of Greenlaw, 149 La. 255.

[16] *American Cotton Cooperative Corp.* v. *N. O. Railway Co.,* 180 La. 836.

hold interest, and is not subject to the prescription of ten years *liberandi causa.*

Fourth Assignment.

This assignment of error is directed at the opinion of this court in holding that the rights were vested in the Porter-Wadley Lumber Company and has decreed them null and void, when the Porter-Wadley Lumber Company has not been made a party to this litigation. It requires no citation of authority to support this statement. Any judgment rendered against the Porter-Wadley Lumber Company when it is not made a party is absolutely null and void as to the rights of the Porter-Wadley Lumber Company. The opinion, therefore, is inconsistent with the decree against the stockholders of the said corporation holding that the mineral rights against the corporation were null and void. If, as the court held, the Porter-Wadley Lumber Company, an Arkansas corporation, was not dissolved, and we ignore the dissolution proceedings under the laws of the state of its creation, then, we submit that the mineral rights are vested in the Porter-Wadley Lumber Company, and that the stockholders, appellants herein, have no interest in the mineral rights and no decree could be rendered against them annulling the corporate rights. The plaintiff has acknowledged the dissolution of the Porter-Wadley Lumber Company in instituting this suit against the stockholders. The plaintiff has brought a suit against the stockholders to have these mineral rights declared null and void. He has not made the Porter-Wadley Lumber Company a party to this suit. No citation was made upon the Porter-Wadley Lumber Company as a corporation. The laws of Louisiana provide a method of suing a foreign corporation by asking a judgment against the foreign corporation and asking that citation be made upon the Secretary of State. None of these things were done.

The plaintiff is contending in this Court that the lumber ompany is still a corporation and still owns the mineral ights; yet, he has not made the company a party to the uit. He has made the individual stockholders parties and s seeking a judgment against them to cancel the mineral ights, which he says the stockholders do not own, and to ancel a mineral reservation in the nature of a leasehold ight owned by the corporation. This assignment of error s well taken, and the opinion and decree should be annulled.

Conclusion.

It is therefore respectfully submitted that this case is one alling for the exercise by this Court of its supervisory owers in order that this case might be reviewed, and hat to such an end a writ of certiorari should be granted nd this Court should review the decision of the Circuit ourt of Appeal and finally reverse it.

JOHN B. FILES,
JOSEPH H. JACKSON,
Counsel for Petitioners.

APPENDIX.

Act No. 267.

AN ACT

(a) To prescribe the manner in which corporations of all kinds, except corporations engaged in banking and insurance in all of its forms, homestead, building and loan associations may be organized, the articles of incorporation amended and their conduct and management after organization.

(b) To fix their liabilities obligations and duties and the liabilities, obligations and duties of their officers and stockholders.

(c) To prescribe the manner in which their capital stock may be subscribed, the subscriptions enforced, and fixing the liabilities of subscribers to the stock and their transferees.

(d) To prescribe the manner in which the capital stock may be increased or decreased, the kind of stock which may be issued, the character of such stock, and how it may be transferred.

(e) To provide for the admission into the State of corporations formed in other States of the Union and elsewhere, and the liabilities, duties and obligations of such corporations when admitted into the State.

(f) To confer upon the courts of this State jurisdiction and authority over all matters connected with the organization, management, conduct, acts and dissolution of corporations, both domestic and foreign, and their officers, agents and employees.

(g) to confer upon the Secretary of State, the Attorney General and other officers of the State authority over all matters connected with the organization, management, conduct and other acts and the dissolution of corporations, both domestic and foreign, and their officers, agents and employees.

(h) To provide for the manner in which corporations and their officers, agents and employees may be served with legal process, and the manner in which they may be brought into court in the absence of such service, and to fix the venue of all suits against them, and to fix when prescription against corporation shall be interrupted.

(i) To impose an organization tax.

(j) To provide for the dissolution of corporations and the appointment of receivers and liquidators.

(k) To prescribe the accounts and statements which corporations and their agents and officers must render.

(l) To prescribe the fines and penalties which corporations, their officers and agents will incur for the violation of any of the provisions of this act, and how such fines and penalties shall be covered.

(m) To repeal certain sections of the Revised Statutes and Acts of the General Assembly, and to supersede provisions of articles of the Revised Code, Code of Practice, sections of the Revised Statutes and Acts of the Legislature in conflict with this act.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That three or more natural persons of full age or duly emancipated may, under this act, unite to form a stock corporation for any lawful business purpose, or purposes, except the business of banking and insurance in all of their several forms, and homestead, building and loan associations; provided, that where there are only three incorporators husband and wife can not be two of such incorporators.

Section 2. Be it further enacted, etc., That the articles of incorporation shall be executed by authentic act, in the English language, signed by each of the incorporators, or their duly constituted agents, and shall state:

(a) The name of the corporation, which shall not be the same nor so similar as to cause confusion with the name of any other domestic corporation or foreign corporation, ad-

mitted to do business in this State; and every corporation, except railroad, telegraph and telephone companies, having a capital stock, shall, after its name, use the word "Incorporated", or its abbreviation, "Inc.".

(b) The purpose, or purposes, for which it is formed. No public service corporation shall, however, include in its charter any purpose, or engage in any business not complementary or incidental to its primary purpose; provided, that corporations organized to manufacture and supply gas or electric light, traction and power, to furnish water, to manufacture ice and establish sewerage or drainage systems may combine one or more of the purposes mentioned in this proviso and those incidental thereto.

(c) The amount of capital stock, which shall not be less than five thousand dollars. Fifty per cent of the amount must be subscribed before the filing of the articles of incorporation, as provided in this act. Fifty per cent of all stock subscribed for must be actually paid in before the corporation engages in business, and the remainder, under penalty of dissolution, within twelve months thereafter; provided, that until the full amount subscribed for has been paid in, the corporation shall not incur liabilities in excess of the amount paid in; and, thereafter, it shall not incur unsecured liabilities greater than twice the amount of its fully paid-up capital and surplus. Until the entire amount of authorized capital stock has been subscribed and paid for, the Board of Directors, shall, on the first of each January and July, after organization, file in the office of the Secretary of State a statement signed and sworn to by the President and Secretary, showing the amount of stock actually subscribed and paid for. The articles of incorporation must also state what portion, if any, is preferred stock and in preference, in conformity with Section 4 of this act.

(d) The amount to which the capital stock may be increased.

(e) The number of shares of which the capital stock shall consist and their par value.

(f) The location of its domicile, which shall be within this State, where all meetings of the stockholders or directors must be held; provided, that with the written consent of all the directors valid meetings of directors may be held outside the State or within the State elsewhere than at its domicile.

(g) The period of duration.

(h) The number of its directors, which shall not be less than three, with the names and postoffice addresses of those, if any selected to serve for the first year, or until their successors are elected, and qualified.

(i) The names and postoffice addresses of the subscribers of the articles of incorporation and a statement of the number of shares of stock which each agrees to take in the corporation, and a description and value of the property, if any, to be given in exchange for such stock, as required by Section 3 of this act. Charters shall be published in a newspaper at the domicile of the corporation, once in a week, at least for thirty days, but it shall not be necessary to publish the names of the subscribers.

Upon the filing in the office of the Secretary of State of a certified copy of the articles of incorporation, together with evidence of its recordation in the office of the Recorder of Mortgages or Clerk of Court in the parish of the domicile, and proof by affidavit of at least two of the incorporators, that fifty per cent of the stock has been subscribed, as hereinbefore required, and after compliance with Section 3 of this Act, and after all taxes, fees and charges required by law shall have been paid, the Secretary of State shall issue a certificate of due incorporation; provided, that when said certificate shall have been finally issued, it shall have the same effect as if issued on the day the act of incorporation was executed, and such certificate, or a certified copy thereof shall be received in evidence in all courts of this State and shall be prima facie proof of the legal creation and existence of such corporation.

Section 3. Be it further enacted, etc., That where subscriptions to the capital stock of a corporation organized

under this act consist, in whole or in part, of property or good will, there must appear in, or be annexed to, the articles of incorporation and be read in connection therewith, an accurate detailed and itemized description of such property, as to amount, location, extent, character and state of improvement, together with a statement of its value as appraised by the directors, and a statement of the value placed upon any good will included in the capital stock.

If the giving of the property or good will in exchange for stock is made subsequent to incorporation, a similar description and appraisement must be filed in the office of the Secretary of State, and in the office of the Clerk and Ex-Officio Recorder of Mortgages in the parish of its domicile, within ten days after the subscription. Stock so issued shall, in the absence of fraud, be fullpaid stock. The right to inquire into or recover for unpaid subscriptions to stock resulting from alleged excessive values placed on property, exchanged therefor, shall be prescribed by five years from the date on which the property was transferred to the corporation.

Section 4. Be it further enacted, etc., That every corporation organized under this act shall have power to create two or more kinds of stock, of such classes, with such designations, preference and voting powers or restrictions or qualifications thereof, as shall be stated and expressed in the articles of incorporation, or in any amendment thereof; and the power to increase or decrease the stock as in this act elsewhere provided, shall apply to all or any of the classes of stock in whole or in part; and such preferred stock may, if desired, be made subject to redemption, out of net profits or earned surplus, at a price not less than par, and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon, dividends at such rates and on such conditions as shall be stated in the original or amended articles of incorporation, and such dividends may be made payable before any dividends shall be set apart on the common stock, and such dividends may be made cumulative.

Section 5. Be it further enacted, etc., That every corporation organized under this act shall pay to the State Treas-

urer a tax of one-twentieth of one per cent upon the amount of capital stock which the corporation is authorized to have, and a like tax on any subsequent increase; provided, that no incorporation tax on the original capital or increase thereof shall be less than $10.00.

Section 6. Be it further enacted, etc., That every corporation may, at a meeting of the stockholders, duly called for the purpose, by the vote of two-thirds of all its stock, amend its articles of incorporation in any manner conformable to the provisions of this act, including the increase or decrease of capital stock.

Provided, however, that the objects and purposes of incorporation shall not be changed, and the capital stock shall not be increased to more than the maximum permitted in the original act of incorporation, nor decreased to an amount less than the corporation indebtedness. A change in objects and purposes may, however, be voted by all stock theretofore issued, and an increase of the capital stock in excess of the amount originally named as the sum to which the capital may be increased may be made by three-fourths of all its outstanding stock.

A certificate of amendment shall be executed and filed in the same manner as the original articles of incorporation.

Section 7. Be it further enacted, etc., That every corporation shall have power:

(a) To invest its Board of Directors with all corporate powers subject to such restrictions as may be named in the charter.

(b) To have succession by its corporate name for the time stated in its articles of incorporation.

(c) To sue and be sued by its corporate name in any court of competent jurisdiction.

(d) To make and use a common seal and alter the same at pleasure.

(e) To acquire property by grant, gift, purchase, and to devise or bequest; to lease, hold and dispose of, and to

mortgage and pledge the same, all subject to such limitations as may be prescribed by law.

(f) To appoint such officers and agents as the business of the corporation may require, and to fix their compensation, having due regard to the nature, character and value of their services.

(g) To make by-laws, not inconsistent with any existing law, fixing or altering the management of its property, the regulation and government of its affairs and the manner of the certification and registration of its stock.

(h) To wind up and dissolve itself, or to be wound up and dissolved in the manner hereinafter prescribed.

(i) To conduct business in this State, other States, the Federal districts, the Territories and possessions of the United States, and in foreign countries.

(j) Corporation may hold stock in other corporations, and the capital stock of one corporation may be issued for capital stock in other corporations; provided, however, that no corporation shall be permitted to vote more than ten per cent of the capital stock of any other corporation, and whenever a given per cent of the stock is required for any purpose, such per cent shall be calculated on the total amount of outstanding stock entitled to vote.

Section 8. Be it further enacted, etc., That except as may hereinafter be otherwise provided, the stock of every corporation organized under this act, shall be represented by certificates and shall be personal property. The form of the certificates shall be determined by the directors and signed by the President or Vice President and the Secretary and sealed with the seal of the corporation, if one has been adopted, and shall be transferable as prescribed by law.

Section 9. Be it further enacted, etc., That subscriptions to the capital stock of a corporation shall be paid at such times and in such installments as the Board of Directors may direct, unless otherwise provided by this act. If default be made in the payment of any installment, the Board of Directors may sue and recover the unpaid balance of the subscription, together with a reasonable attorney's fee.

Section 10. Be it further enacted, etc., That stockholders' meetings for the election of directors shall be held annually, as provided in the charter, at the domicile of the corporation, and notice thereof must be delivered, personally or by depositing in the postoffice, properly addressed, to each stockholder, at least fifteen days before such meeting. At least two days before said meeting, a complete list of the stockholders entitled to vote, shall be open to inspection by the stockholders at the place of said meeting.

Other stockholders' meetings may be held when ordered by the Board of Directors or the holders of 25 per cent of the outstanding stock. Notice of all stockholders' meetings, other than adjourned meetings, shall be given in the manner prescribed for stockholders' meetings for the election of Directors,—unless otherwise prescribed in the charter of the corporation or unless such notice be waived by unanimous consent; provided, that no notice is required where a meeting is adjourned to a given day.

Where the first Board of Directors is not named in the charter, it shall provide the place and the date when the organization is to be perfected, and a meeting for that purpose must be held not more than thirty days after the adoption of the act of incorporation. At that meeting the Directors shall be elected. The first meeting of the Board of Directors shall be held and their names and postoffice addresses filed with the Secretary of State within ten days after the execution of the act, when they are named therein.

Section 11. Be it further enacted, etc., That each stockholder shall, at every stockholders meeting, be entitled to one vote, in person or by written proxy, for each share of the capital stock held by him, or he may send his vote by letter, the signature of which must be acknowledged before a Notary Public or other officer authorized to take affidavits. The stockholders shall have the right of cumulative voting in the elections of officers or diretcors, where the charter as originally adopted, or as amended confers it. Provided, however, where the right of cumulative voting is given by the charter, it shall not be taken away, except by a vote of all the outstanding stock.

Shares of the capital stock of the corporation belonging legally or equitably to the corporation shall be not voted, either directly or indirectly.

Section 12. Be it further enacted, etc., That every subscriber to the capital stock of a corporation, though not a holder, shall be personally liable to the creditors of the corporation to an amount equal to the unpaid balance on the stock, for which he has subscribed. Transferees shall not be liable unless it be shown that the stock was acquired with knowledge of the conditions which would make the subscriber liable; where both subscriber and transferee are liable, the liability shall be insolido, and the liability shall continue as to both, after any disposal of the stock.

No stockholder shall ever be held liable or responsible for the contracts or faults of a corporation in any further sum than as above provided, nor shall any mere informality in organization have the effect of rendering a charter null or exposing a stockholder to any liability other than as above provided.

Section 13. Be it further enacted, etc., That except in case of insolvency or bankruptcy proceedings, and except as provided in Section 9 of this Act, no action to recover an unpaid balance of stock subscriptions shall be brought against any stockholder until judgment has been recovered against the corporation and an execution returned unsatisfied in whole or in part.

Section 14. Be it further enacted, etc., That the business of every corporation organized under this act shall be managed by a board of not less than three directors, each of whom shall own in his own right, at all times during the term of office, at least one full-paid and unpledged share of the capital stock, which fact shall be shown by written declaration. They shall be elected at the first stockholders' meeting, and annually thereafter, and shall hold office until their successors are respectively chosen, and qualified.

Section 15. Be it further enacted, etc., That the directors shall elect from their number a president, and may elect one or more vice-presidents; they shall also elect a secretary and a treasurer, and may combine these two officers in one

person. They may appoint other agents and employees, who shall, respectively, have such power and perform such duties as may be prescribed by the by-laws, and who may be removed at the pleasure of the directors. They shall also have power to fill any vacancy in their number.

Section 16. Be it further enacted, etc., That the president, vice-president, or manager of any corporation organized under the laws of Louisiana, or of a foreign corporation, doing business in this State, shall have the power in the name and in behalf of the corporation to authorize the institution of any suit and other legal proceedings, and no exception of want of authority shall lie on the part of any defendant. They shall have authority to direct the issuance of conservatory writs; the bonding of property in custodia legis, without other general or special power from the Board of Directors of such corporation. Such person, or persons, are also authorized by and on behalf of said corporation to execute in its name any bond, or bonds, in connection with any legal proceedings where it is a party plaintiff, defendant, intervenor, third opponent or otherwise interested, and to make any affidavit required by law or the rules of the court; and such acts by the person, or persons, designated in this section, shall have the same force and effect as the act of the corporation itself and be binding upon it; provided, however, that the authority and powers herein conferred upon said officers, may be modified, limited or denied to them by the charter or by-laws or the corporation or by resolution of the board of directors. Such by-laws or resolution to effect the purpose must, however, be placed of record at the domicile of the corporation in the office where the charter is recorded.

Section 17. Be it further enacted, etc., That if stock be issued for property in violation of the provisions of this act, or if any dividend or other distribution of the assets be made other than from net profits, or if a reduction of capital be made under the guise of a loan to stockholders, or if any report or statement or public notice shall not be made as required by law, or if made, shall be false in any material representation, the directors of such corporation voting or assenting thereto shall be jointly and severally

liable to the creditors of the corporation for any loss or damage arising therefrom, and in the case of reports, statements, and public notices required by law, the officers shall be jointly and severally liable with the directors, as provided above; provided, however, that if the knowledge required for the making of any statement or report prescribed by this section, be not practically obtainable, the officer or director making it shall not be liable as herein set out.

Section 18. Be it further enacted, etc., That the courts shall have jurisdiction over the directors, managers, trustees and other officers of a corporation organized, or admitted to do business, in this State under this Act.

(a) To compel such directors, managers, trustees and other officers to account for their management and disposition of the funds, property and business committed to their charge.

(b) To order, decree and compel payment by them to the corporation which they represent, and to its creditors, of all sums of money and all the value of all property which they may have acquired to themselves, or transferred to others, or may have lost or wasted by any violation of their duties or abuse of their powers.

(c) To suspend any director, trustee, or other officer from exercising his office whenever it shall appear that he has abused his trust.

(d) To revise and regulate the salaries and compensation paid officers and agents, when the salary or compensation paid have not been fixed with due regard to the nature, character and value of their services.

(e) To remove any such director, trustee or other officer upon proof or conviction of gross misconduct.

(f) To direct, if necessary, new elections to be held by the body of stockholders or Board of Directors duly authorized for that purpose, to supply any vacancy, created by such removal, and at such election no person so removed or suspended shall be eligible as a director, trustee or other officer to such company.

(g) To restrain and prevent any fraudulent alienation of property of the company by said directors, trustees or other officers, in cases where it may be threatened, or there is good reason to apprehend, that it is intended to be made.

Section 19. Be it further enacted, etc., That creditors of the corporation holding not less than ten per cent of its liabilities and stockholders holding not less than ten per cent of its stock may sue to effect any of the objects set out in Section 18 of this act; provided however, that neither creditors nor stockholders may institute such suit, unless they were either creditors or stockholders at the time the cause of action arose.

Section 20. Be it further enacted, etc., That no corporation shall issue stock or bonds except for labor done or money or property actually received, and all fictitious issues of stock shall be void and any corporation issuing such fictitious stock shall forfeit its charter.

Section 21. Be it further enacted, etc., That every corporation organized under the laws of this State shall, annually, within thirty days after the time fixed for the annual meeting of the stockholders, file with the Secretary of State a report made and verified by the president or vice-president, the secretary or assistant secretary of the corporation. The report shall state:

(a) The amount of its authorized capital stock and the amount actually issued and outstanding, and whether fully paid or not, and if not, what proportion is fully paid;

(b) The names and addresses of the officers and directors of the company;

(c) The nature and character of the business carried on by the corporation;

(d) The city and street address of its domiciliary office in the State of Louisiana.

If any report be not made and filed as prescribed in this section, either or both of such officers, who shall thereafter neglect or refuse to make and file such a report within

fifteen days, after written request so to do, shall have been made by the Secretary of State shall be under penalty of $50, recoverable by the Attorney General or the District Attorney of the parish wherein the corporation has its domicile or main office, for the use and benefit of the State every day the officer, or officers, shall so neglect or refuse to make and file the statement hereinabove described. Every corporation organized under the laws of this State, and every foreign corporation doing business in this State, shall, once in every calendar year, upon request of any stockholder of record send to such stockholder by mail, addressed to his last known postoffice address, a report made and verified by the president or vice-president and secretary or assistant secretary, containing information of the following subjects, as shown in the last annual report of the company.

(a) The amount of its authorized capital stock, and the proportions actually outstanding and paid for;

(b) The amount, nature, and character of its debts, showing the amount secured and unsecured;

(c) The amount, nature and character of its assets;

(d) The names and addresses of all directors and all officers of the company.

If either or both of such officers shall neglect or refuse to make and mail or deliver to such stockholder, within fifteen days after the written request by the stockholders so to do, they shall be under a penalty of fifty dollars ($50.00) recoverable by such stockholder, for every day such officer or officers shall so neglect or refuse to make and mail or deliver the statement hereinabove described.

Section 22. Be it further enacted, that any domestic or foreign corporation (other than corporations reporting to the Railroad Commission) operating public utilities in this State under a franchise granted by the State, or any parish or municipal corporation, shall in the statement prescribed by the preceding section, state further:

(a) Its receipts during the preceding calendar year.

(b) Its disbursements.

The latter shall state separately the amounts spent for:

1. Maintenance and improvement of its plant and property.

2. Extensions and increase of the plant and property.

3. Salaries and wages.

4. Interest on bonds or other debts.

5. Dividends on stock.

6. Taxes of all kinds.

7. Materials and supplies used in the manufacture of any product during the preceding year.

8. All expenses other than those above enumerated.

9. Number of officers and employees of all kinds.

Corporations of the class mentioned in this section shall file their report between the first of January and the first of April of each year. The failure to so make the report prescribed by the preceding section and containing the information and statements prescribed in this section, shall subject a corporation to a penalty of two hunldred and fifty dollars ($250.00) and twenty-five dollars in addition thereto for every day that it fails to file the report after the expiration of the month of March. The Attorney General, in the name and in behalf of the State, may sue to recover the penalty in any court of competent jurisdiction, or he may instruct any District Attorney of the parish wherein the corporation has its domicile or main office, to bring such suit, and in addition to the recovery of the penalty, the delinquent corporation shall be condemned to pay to the prosecuting attorney a fee of ten per cent on the amount of the penalty which it may be condemned to pay.

Section 23. Be it further enacted, etc., That any corporation formed in any State, Territory or Federal district or possession of the United States, or any foreign country, shall be entitled to a certificate from the Secretary of State, authorizing it to exercise the same powers, rights and privileges as are accorded to similar domestic corporations organized under this act, upon filing in the office of the Secretary of State a certified copy of its certificate of incorporation and of its articles of incorporation; provided, however, that no certificate shall be granted to any foreign corporation having the same name or one so nearly resembling it as to be likely to deceive as that of any corporation already authorized to do business within this State. A foreign corporation so circumstanced may, however, add to its name some term which would distinguish it from the corporation already registered, and thereupon be permitted to register and engage in business.

Certified copies of any subsequent modification of the articles of incorporation or certificate of due incorporation, shall be filed in the same manner as hereinafter provided, and until so filed shall not be effective in this State. Copies of the documents on file with the Secretary of State, certified to by him, shall be prima facie evidence of due incorporation and of authority to do business in this State.

Section 24. Be it further enacted, etc., That any foreign corporation, or the agent of any foreign corporation, that shall establish any office or appoint a resident agent within the limits of this State, without having complied with the provisions of this act, contained in the preceding section as well as the provisions of existing laws relative to the designation of domicile and of an agent or agents for service of process, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than five hundred dollars for each offense, which sum may be recovered in a civil action against the agent or corporation or both, to be instituted by the District Attorney for and in behalf of the State, in any court of competent jurisdiction in any parish where the law is violated, and the agent failing to pay the fine may be imprisoned not less than three days nor more than four

months; provided, that nothing in this section or in this act contained shall apply to any foreign corporation engaged only in interstate or foreign commerce.

Section 25. Be it further enacted, etc., That service of all legal process on any corporation subject to the provisions of this act may be made in the following manner:

(a) On any officer designated in the charter as authorized to receive service, and upon any director of the corporation, or in the cases mentioned in paragraph (d) of this section, or the agent of the corporation in charge of the affairs of the corporation, at the place other than its domicile. This service may be made on the officer, director or agent wherever found.

(b) In case the officer, director or agent mentioned in paragraph (a) of this section cannot be found, this service may be made upon any other regularly employed officer, agent, or employee of the corporation over eighteen years of age, found in the domiciliarly office of the corporation, or in such other office as the corporation may maintain in the parish other than that of its domicile, where suit may be brought in such parish as provided in paragraph (d) of this section.

(c) In case service cannot be made as provided in either paragraph (a) or (b) of this section, the officer charged with the duties of making the service shall, after diligent effort, make return to the court, stating the efforts made by him to secure service and the reasons for his failure so to do, and thereafter the judge, or in the event of his absence from the Parish, the Clerk shall order service to be made on the Secretary of State, whose duty it shall be forthwith, to send by registered mail, addressed to the corporation at its last known domiciliary post office address, the originals of the papers served upon him, retaining in his office true copies thereof, upon which he shall note the date, manner and other particulars of the service and of the disposition of the originals;

(d) Where the corporation is engaged in business in more than one parish, the venue of the suit shall, at the option of

the plaintiff, be in the parish where the cause of action arose, or at the domicile of the corporation if the cause of action results from a trespass or an offense or quasi offense; but if the cause of action results from any other cause the venue of the action shall be in the parish where is or was located the particular office which had supervision of the transaction from which the cause of action arose or at the domicile of the corporation at the option of the plaintiff.

Section 26. Be it further enacted, etc., That service of all legal process on any foreign corporation subject to the provision of this act shall be made as follows:

(a) On any agent, or agents, which the corporation may have designated, in accordance with existing laws, as agent, or agents, for service or process. This service may be made wherever the agent, or agents, may be found;

(b) If the agent, or agents, mentioned in paragraph (a) of this section, cannot be found, then service may be made upon any regularly employed agent or employee of the corporation, over eighteen years old, in any office which the corporation may have established and maintains in this State;

(c) If the corporation, being one required by law to appoint and maintain an agent for service of process, has failed so to do, or such agent, if appointed, cannot be found, and said corporation has not established and maintained an office in the State, the officer charged with the duty of making the service, shall, after diligent effort, make a return to the court, stating the efforts made by him to secure service and the reasons for his failure so to do, and thereafter, the Judge, or in the event of his absence from the parish, the Clerk, shall order service to be made on the Secretary of State, whose duty it shall be forthwith to send, by registered mail, address to the corporation at its last known domiciliary post office address, the originals of the papers serviced upon them, retaining in his office true copies thereof, upon which he shall note the date, the manner and other particulars of the service and of the disposition of the originals;

(d) Where the corporation has established an office in parish other than that where its agent for service of pro-ss resides, the venue of the suit shall, at the option of e plaintiff, be in either the parish where the cause of tion arose, or in the parish of the residence of the cor-ration's agent for service of process, if the cause of action sult from a trespass or an offense, or quasi offense, but the cause of action result from any other cause, the nue of the action shall be in the parish where the agent r service of process has his residence, unless the act of ansaction from which the cause of action arose was wholly ansacted or completed in some other parish where said rporation had and maintained an office.

(e) To facilitate service of process on foreign corpora-ons, the Secretary of State shall, annually, during the onth of August in each year, make and deliver to the lerks of the Several District Courts and to the Sheriffs this State, printed certified lists giving in alphabetical der, the names of all foreign corporations which have mplied with the provisions of this act, or which have ap-inted agents for service of process in this State, and also e names of such agents and the place, city, or town, and reet designated as their domicile, or residence; and said lerks and Sheriffs shall note thereon the date of receipt ereof, and shall keep the same for public inspection on e in their offices. For the purpose and to the extent of terrupting prescription, the person, or persons, so desig-ted on said list, if served with process, shall be conclu-vely presumed to be an agent, or agents, for service of ocess of such corporation until the first day of Septem-r of the next succeeding year, any change or revocation authority by the corporation to the contrary notwith-anding.

(f) In all of the foregoing cases the venue of the suit all, at the option of the plaintiff, be either at the domicile the corporation, or where it has its main office, or in the rish where the cause of action arose, if it result from a espass or offense, or quasi offense; but if the cause of

action result from any other cause, the venue of the action shall be in the parish where is or was located the particular office which had supervision of the transaction from where the cause of action arose; or at the domicile of the corporation if the plaintiff, so elects.

Section 27. Be it further enacted, etc., That in all suits against corporations, whether foreign or domestic, all prescriptions against corporations shall be interrupted by the filing of the suit in the Court having jurisdiction of the action against the corporation.

Section 28. That whenever in the judgment of the Board of Directors it shall be deemed advisable, and for the benefit of such corporation, that it should be dissolved, the board within ten days after the adoption of a resolution to that effect, by a majority of the whole board, at any meeting called for that purpose, of which meeting each director shall have received at least three days notice shall cause notice of the adoption of such resolution to be mailed to each stockholder, together with a notice of a meeting of the stockholders to be held at the office of the corporation, to take action upon the resolution so adopted by the Board of Directors. The meeting of the stockholders shall be held at any hour fixed by the Board of Directors, between the hours of 10 o'clock in the forenoon and 3 in the afternoon of the day so named. On the day so appointed the meeting may, by consent of the majority in interest of the stockholders present, be adjourned from time to time, and if, any meeting original or adjourned, two-thirds in interest of all the stockholders of the corporation shall vote that a dissolution shall take place, a certified copy of such resolution, signed by the presiding officer and secretary of the meeting, shall be filed in the office of the Secretary of State, together with a list of the names and residences of the directors and officers, certified to by the president and secretary of the corporation. Thereupon, the Secretary of State, when satisfied by due proof that the requirements aforesaid have been complied with, shall issue a certificate that the foregoing documents have been filed. The corporation shall then stand dissolved and the board shall publish a notice of said dis-

solution not less than three times in a paper published in the parish of the corporation's domicile, and the corporation shall proceed to settle up and adjust its business and affairs.

Whenever all the stockholders shall consent, in writing, to a dissolution, no meeting or notice thereof shall be necessary; but on filing such consent in the office of the Secretary of State, he shall forthwith issue his certificate, and thereupon the matter shall be proceeded with as if the dissolution had taken place at a meeting called for the purpose.

Section 29. Be it further enacted, etc., That an action for any one or more of the causes mentioned here below may be maintained by the Attorney General, in the name and in behalf of the State, or by a stockholder or stockholders holding not less than twenty per cent of its stock, to procure a judgment dissolving the corporation and forfeiting its corporate rights and franchises or its license to do business within the State, if it be a foreign corporation, or for such other appropriate relief as the Court may deem proper in the premises, towit:

(a) Where the corporation is insolvent as evidenced by a return of no property found on execution or by a judgment or decree in insolvency proceedings, and in such case, a single creditor, in any amounts may act.

(b) Where without justifiable cause it has suspended its ordinary and lawful business for at least one year, and has no intention of resuming such business.

(c) Where it is a party to an illegal combination in restraint of trade.

(d) Where the law imposes the penalty of dissolution.

(e) Where it has failed to organize within the time limited by law.

(f) Where it has failed to maintain a domiciliary office.

(g) For gross and persistent acts ultra vires the corporate powers.

Provided, that no action for the causes set out in paragraphs (b), (c), (e), (f) and (g) shall be instituted until thirty days notice shall have been given the corporation to correct the specific act of which complaint is made.

Section 30. Be it further enacted, etc., That a corporation dissolved under this act shall be extinct in all respects as if its corporate existence had expired by limitation of its charter.

All corporations whether they expire by limitation or are otherwise dissolved, shall be continued as bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to liquidate their affairs, to dispose of and convey their property and to divide their capital, but not for the purpose of continuing business for which they were established.

(a) Upon the dissolution in any manner of any corporation the stockholders shall elect from among their number one or more liquidators (which liquidators, if required by the holders of not less than twenty-five per cent of its stock, shall furnish bond not greater than the appraised value of the assets), with full power to settle its affairs, collect the outstanding debts, sell and convey the property, pay its debts and divide the remaining money and property among the stockholders. They shall have power to meet and act under the by-laws of the corporation, and under regulations to be made by a majority of said liquidators; to fix the price and prescribe the terms and conditions of the sale of such property and the manner in which the sale shall be made, and take notes and bonds, secured by mortgage or otherwise, for part of the purchase price for all or any part of said property; provided, however, that the rights here conferred upon the liquidators may be modified, changed or denied by a majority of the shares of the capital stock of the corporation.

(b) The liquidators shall have authority to sue for and recover the debts and property in the name of the corporation, and may be sued by the same name, and citation may be served upon any one of them, and they shall be liable in solido to any creditor or stockholder for the moneys and property of the corporation which shall come to their hands

or possessions as such liquidators, and for the proper application and distribution thereof.

(c) Where any corporation shall be dissolved in any manner whatever, any court of competent jurisdiction may, at any time, on application of any creditor, or stockholder, and for good reasons shown, order that the liquidators so appointed by the stockholders, shall qualify as judicial liquidators, and liquidate the affairs of said corporation under the orders and decrees of the court, and upon the failure or refusal of said liquidators so to do, the court may appoint one or more persons to be the receivers, of such corporation, to take charge of the estate and effects thereof, and to liquidate and settle the business and affairs of the company with such powers and duties as the court, by its orders and decrees, from time to time, may grant or impose.

Section 31. Be it further enacted, etc., That in this act, unless the contrary intention appears, the "capital stock" of a corporation is the aggregate amount of the funds paid in and due by the stockholders and subscribers to the capital stock of the corporation for the doing of business under its charter.

The privilege of "cumulative voting" shall mean that each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock, multiplied by the number of directors to be elected, and he may cast all of such votes for one director, or may distribute them among any two or more of them, as he may see fit.

A "creditor" of a corporation is one who has a right by law to demand either presently, or upon some future contingency the fulfillment of any obligation or contract, not arising from an offense or quasi offense.

A "domestic corporation" is one formed under the laws of this State, or one formed under the laws of the United States and domiciled in this State. Every other corporation is a "foreign corporation."

An "incorporator" is one of the subscribers of the articles of incorporation and to the capital stock.

"Shares of stock" is the right which the owner has in the management, profits and ultimate assets of the corporation.

A "stockholder" is the owner of a share of the capital stock.

The expression "transact any business within the limits of this State," includes every transaction in this State by the agents of a corporation which does not involve interstate or foreign commerce.

Section 32. Be it further enacted, etc., that corporations of the class contemplated in this act, organized before the adoption of this act, are hereby made subject to its provisions. And the remedies provided by this act shall be available, and enforceable as to existing and all future causes of action, in the manner and in the courts provided for by this act as to corporations to be hereafter formed under this act.

Section 33. Be it further enacted, etc., that the following sections of the Revised Statutes and Act of the General Assembly are hereby repealed:

Sections 683, 684, 685, 686, 687, 688, 690, 725, 740, 741.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 359

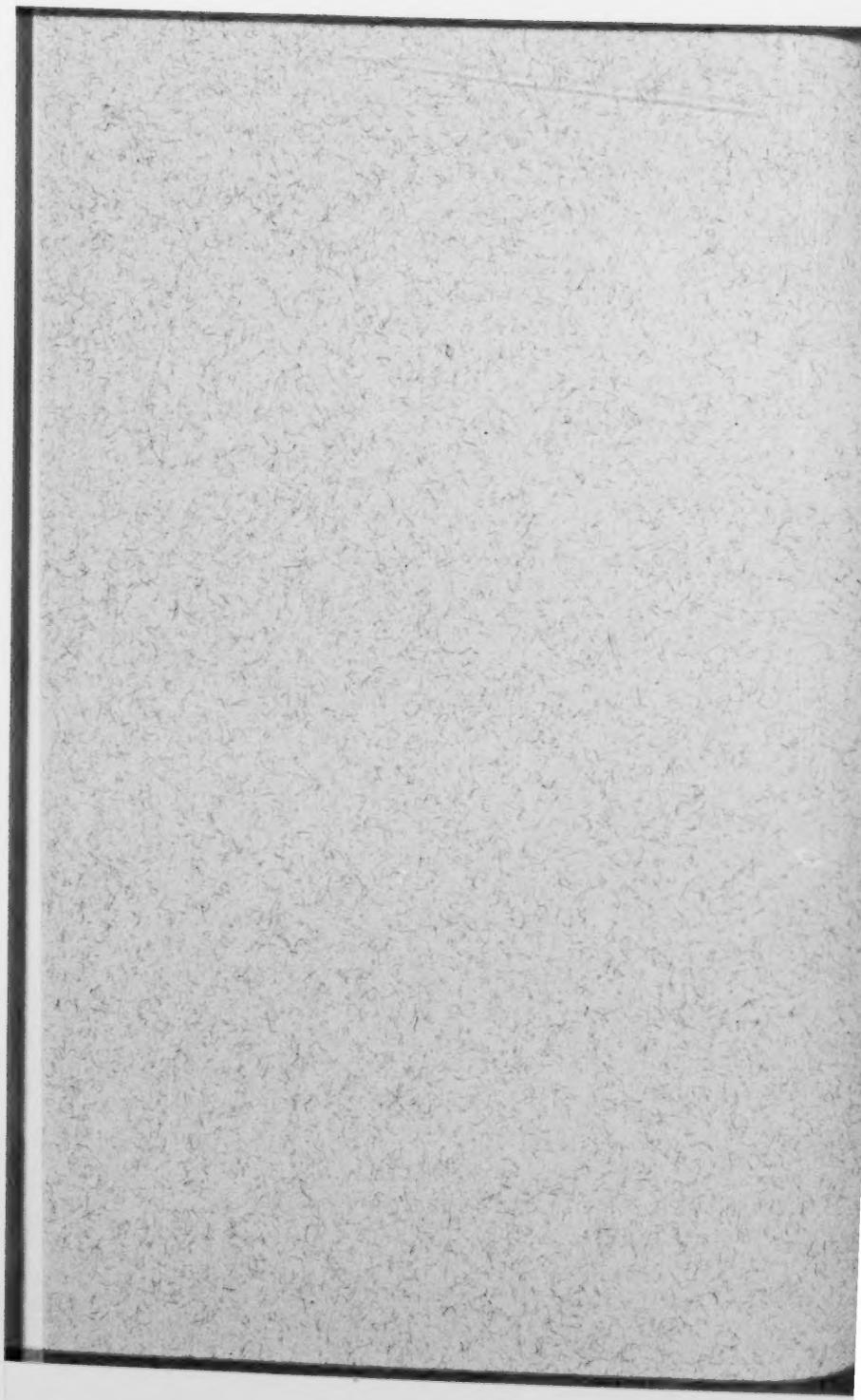
PORTER-WADLEY LUMBER COMPANY, ET AL.,
Petitioners,

vs.

JAMES T. PRUITT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEFS IN SUPPORT THEREOF.

JOHN B. FILES,
JOSEPH H. JACKSON,
Counsel for Petitioners.



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 359

PORTER-WADLEY LUMBER COMPANY, ET AL.,

Petitioners,

vs.

JAMES T. PRUITT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioners, J. K. Wadley, Mrs. Lillian J. Porter, Margaret Porter, Mrs. W. R. Grim, Emeline Grim Fuller, Loretta Grim Thomas, and J. M. Wilson, respectfully show:

1.

James T. Pruitt, respondent, instituted proceedings in the Twenty-Sixth Judicial District Court, Webster Parish, Louisiana, March 14th, 1938, claiming the ownership and possession of the E½ of the SE¼ and the SE¼ of the NE¼ of Section 7, Township 21 North, Range 9 West, Webster Parish, Louisiana; said property was formerly owned by the

Porter-Wadley Lumber Company, an Arkansas corporation, which company sold said land February 12th, 1916, reserving mineral rights as follows:

> "The vendor, the Porter-Wadley Lumber Company, retains, reserves, holds, keeps and owns for a term of 35 years, all oil, gas, sulphur and mineral rights of any and every description that may exist, or be found in and under the lands herein conveyed, with the rights of ingress and egress for purposes of searching, developing, exploiting and producing the said oil, gas, sulphur, or minerals and the right to take water and fuel from the lands for the purpose of such exploitation, with the right to build pipe lines and tanks for the purpose of saving and removing the products that may be found.
>
> "Porter-Wadley Lumber Company shall pay to the vendee hereunder, his heirs and successors or assigns one-half of all the net revenues that may be obtained from the sale of the oil, gas, sulphur and minerals herein reserved, all more fully shown by reference to said deed, which appears recorded in Vol. 26, page 377, Records of Webster Parish, Louisiana, made a part hereof by reference."

He alleges that he acquired said property by ten years prescription, and petitioners are slandering his title by claiming to own said mineral rights and other assets of said Arkansas corporation.

2.

Petitioners promptly removed said suit, as provided by the laws of the United States, to the District Court of the United States for the Western District of Louisiana, Shreveport Division, May 25th, 1938.

3.

Petitioners, in their answer, denied title of respondent in the mineral rights reserved by the Porter-Wadley Lum-

ber Company, and alleged that said company was incorporated under the laws of Arkansas, without debts and was dissolved in accordance with the laws of that State; that upon said dissolution, petitioners, as sole stockholders and beneficiary owners of the assets of said corporation, became thereby vested with the legal title to the corporate assets under the laws of Arkansas; that they have never sold or disposed of their interest in said mineral rights; that one of the stockholders and co-owners of said mineral rights was Margaret Porter, a minor, whose minority suspended the current of prescription not only as to her interest but as to the interests of the other co-owners as well; and with the consent of respondent, a well for oil and gas was drilled on said property January 2nd, 1920, under the terms of a lease executed by petitioners to the Pine Valley Oil Company.

4.

The District Court held that the dissolution of the Porter-Wadley Lumber Company, an Arkansas corporation, in accordance with the laws of Arkansas, could not affect the title or disposition of the mineral rights on property in Louisiana, but that it continued to exist as a corporation in Louisiana; its corporate existence was controlled by Act 267 of 1914 of the Acts of Louisiana, and that the dissolution of said corporation under the laws of Arkansas was not effective in the State of Louisiana.

5.

An appeal from said judgment to the United States Circuit Court of Appeals, Fifth Circuit, was prosecuted and by its decree herein on April 1st, 1940, the judgment of the District Court was affirmed; the Court of Appeals held that the dissolution of the Porter-Wadley Lumber Company, an Arkansas corporation, in accordance with

the laws of Arkansas did not effect a dissolution of said corporation in Louisiana, and that the dissolution of said Arkansas corporation was controlled by Act 267 of 1914 of the State of Louisiana, as interpreted by the Supreme Court of Louisiana, holding that the dissolution of an Arkansas corporation under the laws of Arkansas is not effective in Louisiana.

Petitioners timely applied for a rehearing and assigned errors to the judgment of the District Court and of the Court of Appeals affirming said judgment, and after consideration by the Court of Appeals, the rehearing was denied June 13th, 1940.

6.

In this cause, there is drawn in question the validity of Act 267 of 1914 of the statutes of Louisiana as interpreted by the Court of Appeals, Fifth Circuit. Petitioners aver that the act as interpreted is repugnant to the constitution and laws of the United States, and that respondent in this case cannot recover the property involved upon the pleadings and the evidence introduced on the trial of the case, unless it be held that Act 267 of 1914 of the statutes of Louisiana is applicable to and controls the dissolution of the Porter-Wadley Lumber Company, an Arkansas corporation dissolved in accordance with the laws of Arkansas.

7.

That said act so interpreted and the refusal of the court to give effect to the law of Arkansas violate and are contrary to Section 1, Article 4, of the constitution of the United States, which requires full faith and credit be given in each state to the public acts, records, and judicial proceedings of every other state, and accordingly, petitioners allege that said act as interpreted is unconstitutional, null and void.

8.

Petitioners further aver that said reservation of mineral rights was a binding valid contract between respondent and petitioners at the time of its execution, and the rights so reserved became vested in petitioners and the interpretation of Act 267 of 1914 of the Legislature of Louisiana by the Court of Appeals, Fifth Circuit, and the reasons given in said opinion change the terms and conditions of said contract and annul the rights vested in petitioners thereunder in violation of Article 1, Section 10 of the Constitution of the United States.

9.

Petitioners aver that a correct decision of the issues presented by this case will determine not only the rights of the litigants in the property in controversy, but will likewise be decisive of the rights, titles, and interests of various persons who have acquired rights in large tracts of land subject to the same mineral reservation.

10.

Petitioners aver that the opinion of the Court of Appeals held that the Porter-Wadley Lumber Company, though dissolved in accordance with the laws of Arkansas, the State of its creation, was still an existing corporation in the State of Louisiana, which opinion was contrary to and inconsistent with its decree against petitioners as individual stockholders of said corporation in a suit in which the corporation was not cited or made a party litigant.

11.

Petitioners aver that the decision of the Circuit Court of Appeals is erroneous on the grounds above indicated and more fully set out in assignment of errors in the petition

for rehearing (R. 171) and amplified in the briefs filed herewith, and this honorable Court should require said cause to be certified to it for review and determination in accordance with the provisions of the Acts of Congress.

Wherefore, and for the reasons set forth in the brief in support hereof, petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this honorable Court directed to the Court of Appeals, Fifth Circuit, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record in all proceedings in the case numbered and entitled on its docket, 9301, Porter-Wadley Lumber Company, et al., Appellants, *v.* James T. Pruitt, Appellee, and that the said opinion and decree of the Court of Appeals, Fifth Circuit, may be reversed by this honorable court, and that your petitioners may have such other and further relief in the premises as to this honorable Court may seem mete and just, and your petitioners will forever pray.

JOHN B. FILES,
JOSEPH H. JACKSON,
Counsel for Petitioners.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 359

PORTER-WADLEY LUMBER COMPANY, ET AL.,
Petitioners,

vs.

JAMES T. PRUITT.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The opinion of the Court of Appeals, Fifth Circuit, is reported in the Federal Reporter, entitled Porter-Wadley Lumber Company et al., *v.* James T. Pruitt, 110 Federal Reporter (2nd series) 976 (R. 169).

II.

Jurisdiction.

(1) The date of the decree to be reviewed is April 1st, 1940 (R. 170), the application for rehearing was denied June 13, 1940 (R. 175).

(2) a. It is contended that the opinion and decree violates Section 1 of Article 4 of the Constitution of the United

States in denying full faith and credit to the dissolution proceedings of the Porter-Wadley Lumber Company, made in accordance with the laws of Arkansas, the state creating the corporation;

b. Said opinion and decree annul valid contractual rights of petitioners in violation of Section 10, Article 1, of the Constitution of the United States;

c. That the opinion and decree are erroneous in failing to hold that the plea of ten years prescription filed by respondent did not apply to the rights of petitioners, but if applicable, same was interrupted by a written contract signed by respondent with petitioners, and by acceptance of rentals and royalties from petitioners, and by the minority of Margaret Porter, one of the petitioners, in accordance with the juris prudence of Louisiana.

d. The opinion and decree are inconsistent in holding that the mineral rights were vested in the Porter-Wadley Lumber Company in a suit by respondent against petitioners, the sole stockholders of said corporation, without making the corporation a party to the proceeding.

(3) The statute believed to sustain the jurisdiction in this case is Section 24 of the Judicial Code, as amended by Act of February 13, 1925, 43 Stat. 938; January 31, 1928, 45 Stat. 54; June 7th, 1934, 48 Stat. 926.

(4) Cases believed to sustain appellant jurisdiction of the Supreme Court are: *Forsyth* v. *Hammond,* 166 U. S. 506, 41 L. Ed. 1095; *Title Guaranty & Surety Company* v. *U. S.,* 32 Sup. Ct. 168, 222 U. S. 401, 56 L. Ed. 248; *National Surety Company* v. *Cobb,* 66 F. (2d) 323; *Pease* v. *Peck,* 18 Howard 595, 15 L. Ed. 518; *Relf* v. *Rundle,* 103 U. S. 22, 26 L. Ed. 337; *Trustees of Dartmouth College* v. *Woodward,* 4 Wheat. 514, 4 L. Ed. 629.

III.

Statement of the Case.

Respondent alleges he is the owner and in possession of the E½ of the SE¼ and the SE¼ of the NE¼, Section 7, T. 21 N., R. 9 W., Webster Parish, Louisiana. That petitioners are slandering the title of the respondent to the minerals underlying said property by virtue of a mineral reservation of February 12, 1918, in a deed by the Porter-Wadley Lumber Company to O. M. Cavin. He alleges he acquired said mineral rights by virtue of ten years prescription as the petitioners have not developed said mineral rights within ten years preceding the institution of said suit.

Petitioners denied respondent ever exercised any corporeal possession of mineral rights, that these rights were reserved in a deed from the Porter-Wadley Lumber Company of O. M. Cavin, February 12, 1916, which reads as follows:

> "The vendor, the Porter-Wadley Lumber Company, reserves, holds, keeps and owns for a term of 35 years, all oil, gas, sulphur and mineral rights of any and every description that may exist or be found in and under the lands herein conveyed with the right of ingress and egress for the purpose of searching, developing, exploiting and producing said oil, gas, sulphur or minerals and the right to take water and fuel from the lands for the purpose of such exploitation, with the right to build pipe lines and tanks for the purpose of saving and removing the products that may be found.
>
> "The Porter-Wadley Lumber Company shall pay to the vendee hereunder, his heirs, successors or assigns, one-half of all the net revenue that may be obtained from the sale of the oil, gas, sulphur and minerals herein reserved.
>
> "The intention of this clause being that said oil, gas, sulphur and minerals are not included in this sale and

for a term of 35 years, the Porter-Wadley Lumber Company shall have the right to develop said products and to sell and remove same subject to the condition that one-half of the net amount in money arising from such sale shall be paid over to the grantee herein, his heirs, successors or assigns."

O. M. Cavin was acting as a representative of the North American Investment and Development Company and sold said property December 27, 1917, to W. T. Gleason, making the same reservation. Eight days later, to-wit, January 5, 1918, W. T. Gleason sold this same property to J. T. Pruitt, respondent, making the same mineral reservation.

The Porter-Wadley Lumber Company, an Arkansas corporation, was dissolved May 3, 1917, and surrendered its charter in accordance with the laws of Arkansas.

At the time of dissolution the assets of the corporation became vested in the stockholders as follows:

J. K. Wadley	36/75
Lillian J. Porter	18/75
Margaret Porter, minor	18/75
W. R. Grim	2/75
J. M. Wilson	1/75

W. R. Grim died leaving Mrs. W. R. Grim, Mrs. Emaline Grim Fuller and Mrs. Loretta Grim Thomas as his heirs at law, petitioners herein.

At the time of dissolution one of the stockholders, Margaret Porter was a minor, which suspended the running of prescription not only as to her interest but as to the interest of the major co-owners as well.

An oil and gas lease was made by petitioners May 27, 1918, to Pine Valley Oil Company and an oil and gas well drilled and completed with the knowledge and consent of respondent.

That the mineral reservation constituted in law and in fact a right in the nature of a leasehold estate for 35 years on February 12, 1916.

Judgment was rendered by U. S. Court in favor of respondent and motion for a new trial filed (R. 151-153), urging assignments of error.

IV.

Statement of Facts.

The Porter-Wadley Lumber Company was a corporation organized under the laws of the State of Arkansas and authorized to do business in the State of Louisiana. Prior to February 12, 1916, it acquired large tracts of land in Webster Parish, Louisiana; that E. E. Porter, President of the corporation and owner of practically one-half of the capital stock with J. K. Wadley, died November 5, 1913, in the State of Arkansas, leaving his wife, Lillian J. Porter, and a minor child, Margaret Porter, born April 28, 1910, as his sole heirs at law. J. K. Wadley was appointed executor of the will, and likewise, was appointed guardian of the minor, Margaret Porter, in Arkansas; later, he was appointed Tutor, and W. T. Gleason was appointed under Tutor in the District Court of Webster Parish, Louisiana.

On February 12, 1916, the Porter-Wadley Lumber Company sold a large part of its lands in Webster Parish, Louisiana, including the property in controversy, to O. M. Cavin, who subsequently transferred the property to the North American Investment & Development Company, December 27, 1917, and the North American Investment & Development Company, on the same day, sold the property, including that in controversy, to W. Y. Gleason, and on January 5, 1918, W. T. Gleason sold the property in controversy to J. T. Pruitt, appellee in this case. In all of

these instruments, the mineral contract or reservation was made or referred to, which we have above quoted.

On May 28, 1918, appellants executed an oil and gas lease to Pine Valley Oil Company covering the property in controversy and other lands (R. 94) on which a well was drilled and completed to a depth of twenty-seven hundred (2,700) feet, which well, however, was abandoned January 2, 1920. On November 4, 1936, J. K. Wadley, Lillian J. Porter, and Margaret Porter filed a declaration of ownership in the Conveyance Records of Webster Parish, Louisiana, showing the ownership, the dissolution of the corporation, the development of the property, and the minority of Margaret Porter (R. 100). On November 29, 1933, an oil and gas lease was executed by the appellants and by Margaret Porter to the Arkansas Fuel Oil Corporation for a period of three years, and on June 2, 1930, another oil and gas lease was executed by the appellants, including Margaret Porter, to the Pure Oil Company for a period of three years (R. 33). June 9, 1930, a joint lease was made by the defendants, including Margaret Porter and North American Investment and Development Company, the owner of the land on that date, and Gulf Refining Company, for a period of three years (R. 41).

On May 6, 1929, an oil and gas lease was made by the appellants on part of said property to William Kemp (R. 51). January 5, 1928, a lease was made by the appellants to C. H. Lyons *et al.* (R. 55).

James D. Shaver, an attorney at law of Texarkana, Arkansas, testified (R. 70) that the title vested in J. K. Wadley and Charles W. Porter, trustees under the will of E. E. Porter, deceased, is the same title vested in an executor or administrator, and if the estate owed no debts the trustees acquired no title and that the beneficiary title was vested in Margaret Porter, a minor child.

He further testified in substance (R. 72) that when the Porter-Wadley Lumber Company was dissolved in 1917 without debts the stockholders became the owners of the corporate assets.

It is shown by the testimony of J. K. Wadley and Lillian J. Porter that Margaret Porter was a minor and that the Porter-Wadley Lumber Company was dissolved without debts (R. 112).

James D. Head, a prominent attorney of Arkansas, stated that under the laws of that State upon the dissolution of the corporation the corporate assets became vested in the stockholders in proportion to the stock held (R. 113).

Fred E. Koch stated the purpose of the reservation (R. 120) as follows:

> "The intention of the parties in making said reservation was that the Porter-Wadley Lumber Company was located in the vicinity of the above described lands and its officers were familiar with the oil and gas business, and it was to vest authority in said company to execute oil and gas leases or to develop said property, on the condition that one-half of the revenues, less expenses was to be divided, one-half to the Porter-Wadley Lumber Company and one-half to the German-American Investment Company and its successors. The purpose was to place the management and the control of the mineral sales and development in the Porter-Wadley Lumber Company and its officers, without the necessity of having the German-American Investment Company execute the leases for the reason that J. K. Wadley, who was one of the larger stockholders of the Porter-Wadley Lumber Company and in charge of its affairs was actively engaged in the oil and gas business, and could make contracts that were more advantageous to all parties concerned than the officers of the German-American Investment Company, located in the State of Iowa.

> "As agent and representative of the German-American Investment Company, I felt that my company was fully protected because of the financial ability of the Porter-Wadley Lumber Company and its officers, and for the further reason that said arrangements were made solely on the condition that one-half of the revenues derived from development, leases, or sales of said minerals should be paid over to the German-American Investment Company and I knew that unless said payments were made, the German-American Investment Company would have a right to dissolve and set aside said reservation."

A well was drilled and payments of rental were made under various mineral leases to respondent and his authors in title.

IV.

Specification of Errors.

(1) The Court of Appeals erred in holding that the Porter-Wadley Lumber Company, an Arkansas corporation, which was dissolved in accordance with the laws of the State of Arkansas, continued as a corporation in Louisiana by virtue of the provisions of Act 267 of 1914 of the Acts of Louisiana,[1] contrary to the provisions of Section 1, Article 4, of the Constitution of the United States, and contrary to the established jurisprudence of Louisiana and prior decisions of the Court of Appeals.

(2) That the Court of Appeals erred in holding that the respondent was the owner of the mineral rights thereby divesting petitioners of their rights under said reservation and impairing the contractual rights vested in petitioners in violation of Article 1, Section 10, of the Constitution of the United States.

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[1] See appendix for copy of Act.

(3) That the opinion of the Court of Appeal held that the Porter-Wadley Lumber Company, though dissolved in accordance with the laws of Arkansas, the state of its creation, was an existing corporation in Louisiana and was the owner of said mineral rights, which opinion was inconsistent with its decree which cancelled said mineral rights in a suit against petitioners, sole stockholders of the corporation, when the corporation was not cited or made a party to the suit.

V.

ARGUMENT.

First Assignment.

The decision of the Court of Appeals is contrary to the jurisprudence of the State of Louisiana, and violates Section 1, Article 4, of the U. S. Constitution.

> Art. 4, Sec. 1, U. S. Constitution; Chicago R. R. Co. *v.* Wiggens Ferry Co., 119 U. S. 622, 30 L. Ed. 519; Mormon Church *v.* U. S., 136 U. S. 1, 47, 34 L. Ed. 478; Pewabic Mining Co. *v.* Mason, 145 U. S. 349, 36 L. Ed. 732; Stern Coal & Lbr. Co. *v.* Van Winkle, 221 Fed. 590, 596; Sistare *v.* Sistare, 218 U. S. 1, 54 L. Ed. 905; Converse *v.* Hamilton, 224 U. S. 243, 56 L. Ed. 749.

Second Assignment.

The opinion and decree of the Court of Appeals violates Section 10, Article 1 of the U. S. Constitution.

> La. Civil Code, Art. 1764, 2013; Pioneer Gas Co. *v.* Robinson, 173 La. 938; Sporl *v.* N. Y. Indemnity Co., 176 La. 363; Queensborough *v.* Cazeau, 136 La. 732; Gulf Refining Co. *v.* Glassell, 186 La. 201; State *v.* Board of Administrators, 125 La. 432; Gelpske *v.* Dubuque, 1 Wall 206, 17 L. Ed. 520; Union Bank *v.* Oxford, 90 Fed. 7, 10; Mulhker *v.* New York R. Co., 197 U. S. 570, 49 L. Ed. 872.

Third Assignment.

The property of the dissolved Porter-Wadley Lumber Company reverted to and passed to its stockholders at the moment of dissolution and that the current of prescription did not run because Margaret Porter, one of the stockholders, was a minor and respondent by accepting the rentals and bonus under the various leases estopped the title of petitioners.

(a) Minority suspended prescription.

Sample *v.* Whitaker, 172 La. 722; Walling Heirs *v.* Warfield, 33 Ann. 1177; Bird, executor, *v.* Generes, 30 Ann. 675.

(b) Respondent by accepting rentals and bonus has interrupted prescription.

La. Civil Code, Arts. 3520, 3460-3461; Nabors Oil and Gas Co. *v.* La. Oil Ref. Co., 151 La. 397; Mulhern *v.* Hayne, 171 La. 1003; Frost Lbr. Industries *v.* Union Power Co. Inc., 182 La. 439; Succession of Ferguson, 17 Ann. 255.

(c) Estoppel by acceptance of benefits under contracts.

La. Civil Code, Arts. 802, 3520, 3554; Sample *v.* Whitaker, 172 La. 722; Webb. *v.* Deeson, 11 Ann. 84; Muller *v.* Hoth, 110 La. 105; Rocques *v.* Levecque, 110 La. 306; Keating *v.* Wilbert, 110 La. 461; Bush *v.* Marshall, 6 Howard, 284, 12 L. Ed. 440; Harris *v.* United Public Service Co., 181 La. 990; Leiber *v.* Ouachita Oil and Gas Co., 163 La. 160; Conger *v.* City of New Orleans, 32 Ann. 1254.

(d) A proper interpretation of the mineral reservation shows it to be in the nature of a mineral lease or leasehold estate and is not subject to prescription or limitation under Louisiana law. *New Orleans* v. *Shakespeare,* 39 Ann. 133, *State* v. *Board of Administrators,* 125 La. 432, *Palmer* v.

Bender, 49 Fed. (2nd) 316, *Logan* v. *State Gravel Co.*, 158 La. 105, *Gulf Refining Co.* v. *Glassell*, 186 La. 190, *Smith* v. *Sun Oil Company*, 165 La. 911, *Johnson* v. *Moody*, 168 La. 799, *Robinson* v. *Pioneer Gas Co.*, 1 73 La. 230.

We have argued certain principals of law at length in the briefs filed in the case of Porter-Wadley Lumber Company, et al., petitioners, *v.* C. Orbin Bailey, respondent, presented contemporaneously herewith and respectfully refer the Court to the brief in that case for a more elaborate discussion of the issues involved herein.

Conclusion.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers in order that this case might be reviewed, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the Circuit Court of Appeals and finally reverse it.

JOHN B. FILES,
JOSEPH H. JACKSON,
Counsel for Petitioners.

APPENDIX.

Act No. 267.

AN ACT

(a) To prescribe the manner in which corporations of all kinds, except corporations engaged in banking and insurance in all of its forms, homestead, building and loan associations may be organized, the articles of incorporation amended and their conduct and management after organization.

(b) To fix their liabilities obligations and duties and the liabilities, obligations and duties of their officers and stockholders.

(c) To prescribe the manner in which their capital stock may be subscribed, the subscriptions enforced, and fixing the liabilities of subscribers to the stock and their transferees.

(d) To prescribe the manner in which the capital stock may be increased or decreased, the kind of stock which may be issued, the character of such stock, and how it may be transferred.

(e) To provide for the admission into the State of corporations formed in other States of the Union and elsewhere, and the liabilities, duties and obligations of such corporations when admitted into the State.

(f) To confer upon the courts of this State jurisdiction and authority over all matters connected with the organization, management, conduct, acts and dissolution of corporations, both domestic and foreign, and their officers, agents and employees.

(g) to confer upon the Secretary of State, the Attorney General and other officers of the State authority over all matters connected with the organization, management, conduct and other acts and the dissolution of corporations, both domestic and foreign, and their officers, agents and employees.

(h) To provide for the manner in which corporations and their officers, agents and employees may be served with legal process, and the manner in which they may be brought into court in the absence of such service, and to fix the venue of all suits against them, and to fix when prescription against corporation shall be interrupted.

(i) To impose an organization tax.

(j) To provide for the dissolution of corporations and the appointment of receivers and liquidators.

(k) To prescribe the accounts and statements which corporations and their agents and officers must render.

(l) To prescribe the fines and penalties which corporations, their officers and agents will incur for the violation of any of the provisions of this act, and how such fines and penalties shall be covered.

(m) To repeal certain sections of the Revised Statutes and Acts of the General Assembly, and to supersede provisions of articles of the Revised Code, Code of Practice, sections of the Revised Statutes and Acts of the Legislature in conflict with this act.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That three or more natural persons of full age or duly emancipated may, under this act, unite to form a stock corporation for any lawful business purpose, or purposes, except the business of banking and insurance in all of their several forms, and homestead, building and loan associations; provided, that where there are only three incorporators husband and wife can not be two of such incorporators.

Section 2. Be it further enacted, etc., That the articles of incorporation shall be executed by authentic act, in the English language, signed by each of the incorporators, or their duly constituted agents, and shall state:

(a) The name of the corporation, which shall not be the same nor so similar as to cause confusion with the name of any other domestic corporation or foreign corporation, ad-

mitted to do business in this State; and every corporation, except railroad, telegraph and telephone companies, having a capital stock, shall, after its name, use the word "Incorporated", or its abbreviation, "Inc.".

(b) The purpose, or purposes, for which it is formed. No public service corporation shall, however, include in its charter any purpose, or engage in any business not complementary or incidental to its primary purpose; provided, that corporations organized to manufacture and supply gas or electric light, traction and power, to furnish water, to manufacture ice and establish sewerage or drainage systems may combine one or more of the purposes mentioned in this proviso and those incidental thereto.

(c) The amount of capital stock, which shall not be less than five thousand dollars. Fifty per cent of the amount must be subscribed before the filing of the articles of incorporation, as provided in this act. Fifty per cent of all stock subscribed for must be actually paid in before the corporation engages in business, and the remainder, under penalty of dissolution, within twelve months thereafter; provided, that until the full amount subscribed for has been paid in, the corporation shall not incur liabilities in excess of the amount paid in; and, thereafter, it shall not incur unsecured liabilities greater than twice the amount of its fully paid-up capital and surplus. Until the entire amount of authorized capital stock has been subscribed and paid for, the Board of Directors, shall, on the first of each January and July, after organization, file in the office of the Secretary of State a statement signed and sworn to by the President and Secretary, showing the amount of stock actually subscribed and paid for. The articles of incorporation must also state what portion, if any, is preferred stock and in preference, in conformity with Section 4 of this act.

(d) The amount to which the capital stock may be increased.

(e) The number of shares of which the capital stock shall consist and their par value.

(f) The location of its domicile, which shall be within this State, where all meetings of the stockholders or directors must be held; provided, that with the written consent of all the directors valid meetings of directors may be held outside the State or within the State elsewhere than at its domicile.

(g) The period of duration.

(h) The number of its directors, which shall not be less than three, with the names and postoffice addresses of those, if any selected to serve for the first year, or until their successors are elected, and qualified.

(i) The names and postoffice addresses of the subscribers of the articles of incorporation and a statement of the number of shares of stock which each agrees to take in the corporation, and a description and value of the property, if any, to be given in exchange for such stock, as required by Section 3 of this act. Charters shall be published in a newspaper at the domicile of the corporation, once in a week, at least for thirty days, but it shall not be necessary to publish the names of the subscribers.

Upon the filing in the office of the Secretary of State of a certified copy of the articles of incorporation, together with evidence of its recordation in the office of the Recorder of Mortgages or Clerk of Court in the parish of the domicile, and proof by affidavit of at least two of the incorporators, that fifty per cent of the stock has been subscribed, as hereinbefore required, and after compliance with Section 3 of this Act, and after all taxes, fees and charges required by law shall have been paid, the Secretary of State shall issue a certificate of due incorporation; provided, that when said certificate shall have been finally issued, it shall have the same effect as if issued on the day the act of incorporation was executed, and such certificate, or a certified copy thereof shall be received in evidence in all courts of this State and shall be prima facie proof of the legal creation and existence of such corporation.

Section 3. Be it further enacted, etc., That where subscriptions to the capital stock of a corporation organized

under this act consist, in whole or in part, of property or good will, there must appear in, or be annexed to, the articles of incorporation and be read in connection therewith, an accurate detailed and itemized description of such property, as to amount, location, extent, character and state of improvement, together with a statement of its value as appraised by the directors, and a statement of the value placed upon any good will included in the capital stock.

If the giving of the property or good will in exchange for stock is made subsequent to incorporation, a similar description and appraisement must be filed in the office of the Secretary of State, and in the office of the Clerk and Ex-Officio Recorder of Mortgages in the parish of its domicile, within ten days after the subscription. Stock so issued shall, in the absence of fraud, be fullpaid stock. The right to inquire into or recover for unpaid subscriptions to stock resulting from alleged excessive values placed on property, exchanged therefor, shall be prescribed by five years from the date on which the property was transferred to the corporation.

Section 4. Be it further enacted, etc., That every corporation organized under this act shall have power to create two or more kinds of stock, of such classes, with such designations, preference and voting powers or restrictions or qualifications thereof, as shall be stated and expressed in the articles of incorporation, or in any amendment thereof; and the power to increase or decrease the stock as in this act elsewhere provided, shall apply to all or any of the classes of stock in whole or in part; and such preferred stock may, if desired, be made subject to redemption, out of net profits or earned surplus, at a price not less than par, and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon, dividends at such rates and on such conditions as shall be stated in the original or amended articles of incorporation, and such dividends may be made payable before any dividends shall be set apart on the common stock, and such dividends may be made cumulative.

Section 5. Be it further enacted, etc., That every corporation organized under this act shall pay to the State Treas-

urer a tax of one-twentieth of one per cent upon the amount of capital stock which the corporation is authorized to have, and a like tax on any subsequent increase; provided, that no incorporation tax on the original capital or increase thereof shall be less than $10.00.

Section 6. Be it further enacted, etc., That every corporation may, at a meeting of the stockholders, duly called for the purpose, by the vote of two-thirds of all its stock, amend its articles of incorporation in any manner conformable to the provisions of this act, including the increase or decrease of capital stock.

Provided, however, that the objects and purposes of incorporation shall not be changed, and the capital stock shall not be increased to more than the maximum permitted in the original act of incorporation, nor decreased to an amount less than the corporation indebtedness. A change in objects and purposes may, however, be voted by all stock theretofore issued, and an increase of the capital stock in excess of the amount originally named as the sum to which the capital may be increased may be made by three-fourths of all its outstanding stock.

A certificate of amendment shall be executed and filed in the same manner as the original articles of incorporation.

Section 7. Be it further enacted, etc., That every corporation shall have power:

(a) To invest its Board of Directors with all corporate powers subject to such restrictions as may be named in the charter.

(b) To have succession by its corporate name for the time stated in its articles of incorporation.

(c) To sue and be sued by its corporate name in any court of competent jurisdiction.

(d) To make and use a common seal and alter the same at pleasure.

(e) To acquire property by grant, gift, purchase, and to devise or bequest; to lease, hold and dispose of, and to

mortgage and pledge the same, all subject to such limitations as may be prescribed by law.

(f) To appoint such officers and agents as the business of the corporation may require, and to fix their compensation, having due regard to the nature, character and value of their services.

(g) To make by-laws, not inconsistent with any existing law, fixing or altering the management of its property, the regulation and government of its affairs and the manner of the certification and registration of its stock.

(h) To wind up and dissolve itself, or to be wound up and dissolved in the manner hereinafter prescribed.

(i) To conduct business in this State, other States, the Federal districts, the Territories and possessions of the United States, and in foreign countries.

(j) Corporation may hold stock in other corporations, and the capital stock of one corporation may be issued for capital stock in other corporations; provided, however, that no corporation shall be permitted to vote more than ten per cent of the capital stock of any other corporation, and whenever a given per cent of the stock is required for any purpose, such per cent shall be calculated on the total amount of outstanding stock entitled to vote.

Section 8. Be it further enacted, etc., That except as may hereinafter be otherwise provided, the stock of every corporation organized under this act, shall be represented by certificates and shall be personal property. The form of the certificates shall be determined by the directors and signed by the President or Vice President and the Secretary and sealed with the seal of the corporation, if one has been adopted, and shall be transferable as prescribed by law.

Section 9. Be it further enacted, etc., That subscriptions to the capital stock of a corporation shall be paid at such times and in such installments as the Board of Directors may direct, unless otherwise provided by this act. If default be made in the payment of any installment, the Board of Directors may sue and recover the unpaid balance of the subscription, together with a reasonable attorney's fee.

Section 10. Be it further enacted, etc., That stockholders' meetings for the election of directors shall be held annually, as provided in the charter, at the domicile of the corporation, and notice thereof must be delivered, personally or by depositing in the postoffice, properly addressed, to each stockholder, at least fifteen days before such meeting. At least two days before said meeting, a complete list of the stockholders entitled to vote, shall be open to inspection by the stockholders at the place of said meeting.

Other stockholders' meetings may be held when ordered by the Board of Directors or the holders of 25 per cent of the outstanding stock. Notice of all stockholders' meetings, other than adjourned meetings, shall be given in the manner prescribed for stockholders' meetings for the election of Directors,—unless otherwise prescribed in the charter of the corporation or unless such notice be waived by unanimous consent; provided, that no notice is required where a meeting is adjourned to a given day.

Where the first Board of Directors is not named in the charter, it shall provide the place and the date when the organization is to be perfected, and a meeting for that purpose must be held not more than thirty days after the adoption of the act of incorporation. At that meeting the Directors shall be elected. The first meeting of the Board of Directors shall be held and their names and postoffice addresses filed with the Secretary of State within ten days after the execution of the act, when they are named therein.

Section 11. Be it further enacted, etc., That each stockholder shall, at every stockholders meeting, be entitled to one vote, in person or by written proxy, for each share of the capital stock held by him, or he may send his vote by letter, the signature of which must be acknowledged before a Notary Public or other officer authorized to take affidavits. The stockholders shall have the right of cumulative voting in the elections of officers or diretcors, where the charter as originally adopted, or as amended confers it. Provided, however, where the right of cumulative voting is given by the charter, it shall not be taken away, except by a vote of all the outstanding stock.

Shares of the capital stock of the corporation belonging legally or equitably to the corporation shall be not voted, either directly or indirectly.

Section 12. Be it further enacted, etc., That every subscriber to the capital stock of a corporation, though not a holder, shall be personally liable to the creditors of the corporation to an amount equal to the unpaid balance on the stock, for which he has subscribed. Transferees shall not be liable unless it be shown that the stock was acquired with knowledge of the conditions which would make the subscriber liable; where both subscriber and transferee are liable, the liability shall be insolido, and the liability shall continue as to both, after any disposal of the stock.

No stockholder shall ever be held liable or responsible for the contracts or faults of a corporation in any further sum than as above provided, nor shall any mere informality in organization have the effect of rendering a charter null or exposing a stockholder to any liability other than as above provided.

Section 13. Be it further enacted, etc., That except in case of insolvency or bankruptcy proceedings, and except as provided in Section 9 of this Act, no action to recover an unpaid balance of stock subscriptions shall be brought against any stockholder until judgment has been recovered against the corporation and an execution returned unsatisfied in whole or in part.

Section 14. Be it further enacted, etc., That the business of every corporation organized under this act shall be managed by a board of not less than three directors, each of whom shall own in his own right, at all times during the term of office, at least one full-paid and unpledged share of the capital stock, which fact shall be shown by written declaration. They shall be elected at the first stockholders' meeting, and annually thereafter, and shall hold office until their successors are respectively chosen, and qualified.

Section 15. Be it further enacted, etc., That the directors shall elect from their number a president, and may elect one or more vice-presidents; they shall also elect a secretary and a treasurer, and may combine these two officers in one

person. They may appoint other agents and employees, who shall, respectively, have such power and perform such duties as may be prescribed by the by-laws, and who may be removed at the pleasure of the directors. They shall also have power to fill any vacancy in their number.

Section 16. Be it further enacted, etc., That the president, vice-president, or manager of any corporation organized under the laws of Louisiana, or of a foreign corporation, doing business in this State, shall have the power in the name and in behalf of the corporation to authorize the institution of any suit and other legal proceedings, and no exception of want of authority shall lie on the part of any defendant. They shall have authority to direct the issuance of conservatory writs; the bonding of property in custodia legis, without other general or special power from the Board of Directors of such corporation. Such person, or persons, are also authorized by and on behalf of said corporation to execute in its name any bond, or bonds, in connection with any legal proceedings where it is a party plaintiff, defendant, intervenor, third opponent or otherwise interested, and to make any affidavit required by law or the rules of the court; and such acts by the person, or persons, designated in this section, shall have the same force and effect as the act of the corporation itself and be binding upon it; provided, however, that the authority and powers herein conferred upon said officers, may be modified, limited or denied to them by the charter or by-laws or the corporation or by resolution of the board of directors. Such by-laws or resolution to effect the purpose must, however, be placed of record at the domicile of the corporation in the office where the charter is recorded.

Section 17. Be it further enacted, etc., That if stock be issued for property in violation of the provisions of this act, or if any dividend or other distribution of the assets be made other than from net profits, or if a reduction of capital be made under the guise of a loan to stockholders, or if any report or statement or public notice shall not be made as required by law, or if made, shall be false in any material representation, the directors of such corporation voting or assenting thereto shall be jointly and severally

liable to the creditors of the corporation for any loss or damage arising therefrom, and in the case of reports, statements, and public notices required by law, the officers shall be jointly and severally liable with the directors, as provided above; provided, however, that if the knowledge required for the making of any statement or report prescribed by this section, be not practically obtainable, the officer or director making it shall not be liable as herein set out.

Section 18. Be it further enacted, etc., That the courts shall have jurisdiction over the directors, managers, trustees and other officers of a corporation organized, or admitted to do business, in this State under this Act.

(a) To compel such directors, managers, trustees and other officers to account for their management and disposition of the funds, property and business committed to their charge.

(b) To order, decree and compel payment by them to the corporation which they represent, and to its creditors, of all sums of money and all the value of all property which they may have acquired to themselves, or transferred to others, or may have lost or wasted by any violation of their duties or abuse of their powers.

(c) To suspend any director, trustee, or other officer from exercising his office whenever it shall appear that he has abused his trust.

(d) To revise and regulate the salaries and compensation paid officers and agents, when the salary or compensation paid have not been fixed with due regard to the nature, character and value of their services.

(e) To remove any such director, trustee or other officer upon proof or conviction of gross misconduct.

(f) To direct, if necessary, new elections to be held by the body of stockholders or Board of Directors duly authorized for that purpose, to supply any vacancy, created by such removal, and at such election no person so removed or suspended shall be eligible as a director, trustee or other officer to such company.

(g) To restrain and prevent any fraudulent alienation of property of the company by said directors, trustees or other officers, in cases where it may be threatened, or there is good reason to apprehend, that it is intended to be made.

Section 19. Be it further enacted, etc., That creditors of the corporation holding not less than ten per cent of its liabilities and stockholders holding not less than ten per cent of its stock may sue to effect any of the objects set out in Section 18 of this act; provided however, that neither creditors nor stockholders may institute such suit, unless they were either creditors or stockholders at the time the cause of action arose.

Section 20. Be it further enacted, etc., That no corporation shall issue stock or bonds except for labor done or money or property actually received, and all fictitious issues of stock shall be void and any corporation issuing such fictitious stock shall forfeit its charter.

Section 21. Be it further enacted, etc., That every corporation organized under the laws of this State shall, annually, within thirty days after the time fixed for the annual meeting of the stockholders, file with the Secretary of State a report made and verified by the president or vice-president, the secretary or assistant secretary of the corporation. The report shall state:

(a) The amount of its authorized capital stock and the amount actually issued and outstanding, and whether fully paid or not, and if not, what proportion is fully paid;

(b) The names and addresses of the officers and directors of the company;

(c) The nature and character of the business carried on by the corporation;

(d) The city and street address of its domiciliary office in the State of Louisiana.

If any report be not made and filed as prescribed in this section, either or both of such officers, who shall thereafter neglect or refuse to make and file such a report within

fifteen days, after written request so to do, shall have been made by the Secretary of State shall be under penalty of $50, recoverable by the Attorney General or the District Attorney of the parish wherein the corporation has its domicile or main office, for the use and benefit of the State every day the officer, or officers, shall so neglect or refuse to make and file the statement hereinabove described. Every corporation organized under the laws of this State, and every foreign corporation doing business in this State, shall, once in every calendar year, upon request of any stockholder of record send to such stockholder by mail, addressed to his last known postoffice address, a report made and verified by the president or vice-president and secretary or assistant secretary, containing information of the following subjects, as shown in the last annual report of the company.

(a) The amount of its authorized capital stock, and the proportions actually outstanding and paid for;

(b) The amount, nature, and character of its debts, showing the amount secured and unsecured;

(c) The amount, nature and character of its assets;

(d) The names and addresses of all directors and all officers of the company.

If either or both of such officers shall neglect or refuse to make and mail or deliver to such stockholder, within fifteen days after the written request by the stockholders so to do, they shall be under a penalty of fifty dollars ($50.00) recoverable by such stockholder, for every day such officer or officers shall so neglect or refuse to make and mail or deliver the statement hereinabove described.

Section 22. Be it further enacted, that any domestic or foreign corporation (other than corporations reporting to the Railroad Commission) operating public utilities in this State under a franchise granted by the State, or any parish or municipal corporation, shall in the statement prescribed by the preceding section, state further:

(a) Its receipts during the preceding calendar year.

(b) Its disbursements.

The latter shall state separately the amounts spent for:

1. Maintenance and improvement of its plant and property.

2. Extensions and increase of the plant and property.

3. Salaries and wages.

4. Interest on bonds or other debts.

5. Dividends on stock.

6. Taxes of all kinds.

7. Materials and supplies used in the manufacture of any product during the preceding year.

8. All expenses other than those above enumerated.

9. Number of officers and employees of all kinds.

Corporations of the class mentioned in this section shall file their report between the first of January and the first of April of each year. The failure to so make the report prescribed by the preceding section and containing the information and statements prescribed in this section, shall subject a corporation to a penalty of two hunldred and fifty dollars ($250.00) and twenty-five dollars in addition thereto for every day that it fails to file the report after the expiration of the month of March. The Attorney General, in the name and in behalf of the State, may sue to recover the penalty in any court of competent jurisdiction, or he may instruct any District Attorney of the parish wherein the corporation has its domicile or main office, to bring such suit, and in addition to the recovery of the penalty, the delinquent corporation shall be condemned to pay to the prosecuting attorney a fee of ten per cent on the amount of the penalty which it may be condemned to pay.

Section 23. Be it further enacted, etc., That any corporation formed in any State, Territory or Federal district or possession of the United States, or any foreign country, shall be entitled to a certificate from the Secretary of State, authorizing it to exercise the same powers, rights and privileges as are accorded to similar domestic corporations organized under this act, upon filing in the office of the Secretary of State a certified copy of its certificate of incorporation and of its articles of incorporation; provided, however, that no certificate shall be granted to any foreign corporation having the same name or one so nearly resembling it as to be likely to deceive as that of any corporation already authorized to do business within this State. A foreign corporation so circumstanced may, however, add to its name some term which would distinguish it from the corporation already registered, and thereupon be permitted to register and engage in business.

Certified copies of any subsequent modification of the articles of incorporation or certificate of due incorporation, shall be filed in the same manner as hereinafter provided, and until so filed shall not be effective in this State. Copies of the documents on file with the Secretary of State, certified to by him, shall be prima facie evidence of due incorporation and of authority to do business in this State.

Section 24. Be it further enacted, etc., That any foreign corporation, or the agent of any foreign corporation, that shall establish any office or appoint a resident agent within the limits of this State, without having complied with the provisions of this act, contained in the preceding section as well as the provisions of existing laws relative to the designation of domicile and of an agent or agents for service of process, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than five hundred dollars for each offense, which sum may be recovered in a civil action against the agent or corporation or both, to be instituted by the District Attorney for and in behalf of the State, in any court of competent jurisdiction in any parish where the law is violated, and the agent failing to pay the fine may be imprisoned not less than three days nor more than four

months; provided, that nothing in this section or in this act contained shall apply to any foreign corporation engaged only in interstate or foreign commerce.

Section 25. Be it further enacted, etc., That service of all legal process on any corporation subject to the provisions of this act may be made in the following manner:

(a) On any officer designated in the charter as authorized to receive service, and upon any director of the corporation, or in the cases mentioned in paragraph (d) of this section, or the agent of the corporation in charge of the affairs of the corporation, at the place other than its domicile. This service may be made on the officer, director or agent wherever found.

(b) In case the officer, director or agent mentioned in paragraph (a) of this section cannot be found, this service may be made upon any other regularly employed officer, agent, or employee of the corporation over eighteen years of age, found in the domiciliarly office of the corporation, or in such other office as the corporation may maintain in the parish other than that of its domicile, where suit may be brought in such parish as provided in paragraph (d) of this section.

(c) In case service cannot be made as provided in either paragraph (a) or (b) of this section, the officer charged with the duties of making the service shall, after diligent effort, make return to the court, stating the efforts made by him to secure service and the reasons for his failure so to do, and thereafter the judge, or in the event of his absence from the Parish, the Clerk shall order service to be made on the Secretary of State, whose duty it shall be forthwith, to send by registered mail, addressed to the corporation at its last known domiciliary post office address, the originals of the papers served upon him, retaining in his office true copies thereof, upon which he shall note the date, manner and other particulars of the service and of the disposition of the originals;

(d) Where the corporation is engaged in business in more than one parish, the venue of the suit shall, at the option of

the plaintiff, be in the parish where the cause of action arose, or at the domicile of the corporation if the cause of action results from a trespass or an offense or quasi offense; but if the cause of action results from any other cause the venue of the action shall be in the parish where is or was located the particular office which had supervision of the transaction from which the cause of action arose or at the domicile of the corporation at the option of the plaintiff.

Section 26. Be it further enacted, etc., That service of all legal process on any foreign corporation subject to the provision of this act shall be made as follows:

(a) On any agent, or agents, which the corporation may have designated, in accordance with existing laws, as agent, or agents, for service or process. This service may be made wherever the agent, or agents, may be found;

(b) If the agent, or agents, mentioned in paragraph (a) of this section, cannot be found, then service may be made upon any regularly employed agent or employee of the corporation, over eighteen years old, in any office which the corporation may have established and maintains in this State;

(c) If the corporation, being one required by law to appoint and maintain an agent for service of process, has failed so to do, or such agent, if appointed, cannot be found, and said corporation has not established and maintained an office in the State, the officer charged with the duty of making the service, shall, after diligent effort, make a return to the court, stating the efforts made by him to secure service and the reasons for his failure so to do, and thereafter, the Judge, or in the event of his absence from the parish, the Clerk, shall order service to be made on the Secretary of State, whose duty it shall be forthwith to send, by registered mail, address to the corporation at its last known domiciliary post office address, the originals of the papers serviced upon them, retaining in his office true copies thereof, upon which he shall note the date, the manner and other particulars of the service and of the disposition of the originals;

(d) Where the corporation has established an office in a parish other than that where its agent for service of process resides, the venue of the suit shall, at the option of the plaintiff, be in either the parish where the cause of action arose, or in the parish of the residence of the corporation's agent for service of process, if the cause of action result from a trespass or an offense, or quasi offense, but if the cause of action result from any other cause, the venue of the action shall be in the parish where the agent for service of process has his residence, unless the act of transaction from which the cause of action arose was wholly transacted or completed in some other parish where said corporation had and maintained an office.

(e) To facilitate service of process on foreign corporations, the Secretary of State shall, annually, during the month of August in each year, make and deliver to the Clerks of the Several District Courts and to the Sheriffs of this State, printed certified lists giving in alphabetical order, the names of all foreign corporations which have complied with the provisions of this act, or which have appointed agents for service of process in this State, and also the names of such agents and the place, city, or town, and street designated as their domicile, or residence; and said Clerks and Sheriffs shall note thereon the date of receipt thereof, and shall keep the same for public inspection on file in their offices. For the purpose and to the extent of interrupting prescription, the person, or persons, so designated on said list, if served with process, shall be conclusively presumed to be an agent, or agents, for service of process of such corporation until the first day of September of the next succeeding year, any change or revocation of authority by the corporation to the contrary notwithstanding.

(f) In all of the foregoing cases the venue of the suit shall, at the option of the plaintiff, be either at the domicile of the corporation, or where it has its main office, or in the parish where the cause of action arose, if it result from a trespass or offense, or quasi offense; but if the cause of

action result from any other cause, the venue of the action shall be in the parish where is or was located the particular office which had supervision of the transaction from where the cause of action arose; or at the domicile of the corporation if the plaintiff, so elects.

Section 27. Be it further enacted, etc., That in all suits against corporations, whether foreign or domestic, all prescriptions against corporations shall be interrupted by the filing of the suit in the Court having jurisdiction of the action against the corporation.

Section 28. That whenever in the judgment of the Board of Directors it shall be deemed advisable, and for the benefit of such corporation, that it should be dissolved, the board within ten days after the adoption of a resolution to that effect, by a majority of the whole board, at any meeting called for that purpose, of which meeting each director shall have received at least three days notice shall cause notice of the adoption of such resolution to be mailed to each stockholder, together with a notice of a meeting of the stockholders to be held at the office of the corporation, to take action upon the resolution so adopted by the Board of Directors. The meeting of the stockholders shall be held at any hour fixed by the Board of Directors, between the hours of 10 o'clock in the forenoon and 3 in the afternoon of the day so named. On the day so appointed the meeting may, by consent of the majority in interest of the stockholders present, be adjourned from time to time, and if, any meeting original or adjourned, two-thirds in interest of all the stockholders of the corporation shall vote that a dissolution shall take place, a certified copy of such resolution, signed by the presiding officer and secretary of the meeting, shall be filed in the office of the Secretary of State, together with a list of the names and residences of the directors and officers, certified to by the president and secretary of the corporation. Thereupon, the Secretary of State, when satisfied by due proof that the requirements aforesaid have been complied with, shall issue a certificate that the foregoing documents have been filed. The corporation shall then stand dissolved and the board shall publish a notice of said dis-

solution not less than three times in a paper published in the parish of the corporation's domicile, and the corporation shall proceed to settle up and adjust its business and affairs.

Whenever all the stockholders shall consent, in writing, to a dissolution, no meeting or notice thereof shall be necessary; but on filing such consent in the office of the Secretary of State, he shall forthwith issue his certificate, and thereupon the matter shall be proceeded with as if the dissolution had taken place at a meeting called for the purpose.

Section 29. Be it further enacted, etc., That an action for any one or more of the causes mentioned here below may be maintained by the Attorney General, in the name and in behalf of the State, or by a stockholder or stockholders holding not less than twenty per cent of its stock, to procure a judgment dissolving the corporation and forfeiting its corporate rights and franchises or its license to do business within the State, if it be a foreign corporation, or for such other appropriate relief as the Court may deem proper in the premises, towit:

(a) Where the corporation is insolvent as evidenced by a return of no property found on execution or by a judgment or decree in insolvency proceedings, and in such case, a single creditor, in any amounts may act.

(b) Where without justifiable cause it has suspended its ordinary and lawful business for at least one year, and has no intention of resuming such business.

(c) Where it is a party to an illegal combination in restraint of trade.

(d) Where the law imposes the penalty of dissolution.

(e) Where it has failed to organize within the time limited by law.

(f) Where it has failed to maintain a domiciliary office.

(g) For gross and persistent acts ultra vires the corporate powers.

Provided, that no action for the causes set out in paragraphs (b), (c), (e), (f) and (g) shall be instituted until thirty days notice shall have been given the corporation to correct the specific act of which complaint is made.

Section 30. Be it further enacted, etc., That a corporation dissolved under this act shall be extinct in all respects as if its corporate existence had expired by limitation of its charter.

All corporations whether they expire by limitation or are otherwise dissolved, shall be continued as bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to liquidate their affairs, to dispose of and convey their property and to divide their capital, but not for the purpose of continuing business for which they were established.

(a) Upon the dissolution in any manner of any corporation the stockholders shall elect from among their number one or more liquidators (which liquidators, if required by the holders of not less than twenty-five per cent of its stock, shall furnish bond not greater than the appraised value of the assets), with full power to settle its affairs, collect the outstanding debts, sell and convey the property, pay its debts and divide the remaining money and property among the stockholders. They shall have power to meet and act under the by-laws of the corporation, and under regulations to be made by a majority of said liquidators; to fix the price and prescribe the terms and conditions of the sale of such property and the manner in which the sale shall be made, and take notes and bonds, secured by mortgage or otherwise, for part of the purchase price for all or any part of said property; provided, however, that the rights here conferred upon the liquidators may be modified, changed or denied by a majority of the shares of the capital stock of the corporation.

(b) The liquidators shall have authority to sue for and recover the debts and property in the name of the corporation, and may be sued by the same name, and citation may be served upon any one of them, and they shall be liable in solido to any creditor or stockholder for the moneys and property of the corporation which shall come to their hands

or possessions as such liquidators, and for the proper application and distribution thereof.

(c) Where any corporation shall be dissolved in any manner whatever, any court of competent jurisdiction may, at any time, on application of any creditor, or stockholder, and for good reasons shown, order that the liquidators so appointed by the stockholders, shall qualify as judicial liquidators, and liquidate the affairs of said corporation under the orders and decrees of the court, and upon the failure or refusal of said liquidators so to do, the court may appoint one or more persons to be the receivers, of such corporation, to take charge of the estate and effects thereof, and to liquidate and settle the business and affairs of the company with such powers and duties as the court, by its orders and decrees, from time to time, may grant or impose.

Section 31. Be it further enacted, etc., That in this act, unless the contrary intention appears, the "capital stock" of a corporation is the aggregate amount of the funds paid in and due by the stockholders and subscribers to the capital stock of the corporation for the doing of business under its charter.

The privilege of "cumulative voting" shall mean that each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock, multiplied by the number of directors to be elected, and he may cast all of such votes for one director, or may distribute them among any two or more of them, as he may see fit.

A "creditor" of a corporation is one who has a right by law to demand either presently, or upon some future contingency the fulfillment of any obligation or contract, not arising from an offense or quasi offense.

A "domestic corporation" is one formed under the laws of this State, or one formed under the laws of the United States and domiciled in this State. Every other corporation is a "foreign corporation."

An "incorpora[illegible]" is one of the subscribers of the articles of incorporation and to the capital stock.

"Shares of stock" is the right which the owner has in the management, profits and ultimate assets of the corporation.

A "stockholder" is the owner of a share of the capital stock.

The expression "transact any business within the limits of this State," includes every transaction in this State by the agents of a corporation which does not involve interstate or foreign commerce.

Section 32. Be it further enacted, etc., that corporations of the class contemplated in this act, organized before the adoption of this act, are hereby made subject to its provisions. And the remedies provided by this act shall be available, and enforceable as to existing and all future causes of action, in the manner and in the courts provided for by this act as to corporations to be hereafter formed under this act.

Section 33. Be it further enacted, etc., that the following sections of the Revised Statutes and Act of the General Assembly are hereby repealed:

Sections 683, 684, 685, 686, 687, 688, 690, 725, 740, 741.